



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 4 दिसम्बर, 2010 / 13 अग्रहायण, 1932

हिमाचल प्रदेश सरकार

DEPARTMENT OF LAW

*Shimla-2, the 2nd December, 2010*

NOTIFICATION

**No. LLR-E (9)1/88-III (Loose).**—Governor Himachal Pradesh is pleased to order that Shri M. L. Sharma, Advocate will represent the State of H.P. in the Hon'ble Supreme Court of India as Panel Advocate both for Civil and Criminal cases with immediate effect on the following terms and conditions of fee :—

- (i) Rs. 1100/- (Rupees one thousand one hundred) per appearance in miscellaneous hearings.
- (ii) Rs. 2000/- (Rupees two thousand) per appearance in regular hearing.
- (iii) Rs. 1100/- (one thousand one hundred) for drafting of Special Leave Petition/Counter.

By order,  
Sd/-

*L.R.-cum-Secretary (Law).*

**DEPARTMENT OF LAW****NOTIFICATION***Shimla-2, the 9th August, 2010*

**No. LLR-E ((9)1/88-III (Loose).**—Governor Himachal Pradesh is pleased to order that Sh. Rohit Sharma, Sh. Anil Nag and Sh. Abhishek Sood Advocates, will represent the State of H.P. in the Hon'ble Supreme Court of India as Panel Advocate both for Civil and Criminal cases with immediate effect on the following terms and conditions of fee follows as under:—

- (i) Rs. 1100/- (Rupees one thousand one hundred) per appearance in miscellaneous hearings.
- (ii) Rs. 2000/- (Rupees two thousand) per appearance in regular hearing.
- (iii) Rs. 1100/- (one thousand one hundred) for drafting of Special Leave Petition/Counter.

By order,  
Sd/-  
LR.Cum-Secretary (Law).

**DEPARTMENT OF LABOUR AND EMPLOYMENT****NOTIFICATION***Shimla-2 , 3rd December, 2010*

**No. Sharm (A) 7-1/2005 (Award).**—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	72/2001	S/Sh. Jai Singh Vs SE, I&PH Circle, Nahan & Ors.	27-10-2010
2.	89/2006	Darshan Lal Vs Deputy Director, H.P. State Financial Corporation, Nahan & Ors.	01-10-2010
3.	47/2007	Dipesh Singha Vs M/S Shoghi Communication Ltd., District Shimla.	05-10-2010
4.	25/2009	Ram Saran Vs President, Kalka Shimla Goods Transport, Union, Solan.	18-10-2010
5.	253/2002	Man Singh Vs G.M. M/S Auto Comps India Ltd., Parwanoo, Solan.	25-10-2010
6.	15/2007	Nagin Chand Vs Secretary, HPPWD & Ors.	07-10-2010
7.	78/2005	Bidhi Singh & Ors. Vs M.D., H.P. Financial Corporation, Shimla & Ors.	25-10-2010
8.	23/2010	Dinesh Kumar Vs M.D. M/S Vaidya Nutraceuticals(P) Ltd., Barotiwala, Solan.	27-10-2010
9.	3/2010	Ajay Singh Vs M.D. M/S Vaidya Nutraceuticals(P) Ltd., Barotiwala, Solan.	27-10-2010
10	37/2010	Upender Kumar Vs M.D. M/S Vaidya Nutraceuticals(P) Ltd., Barotiwala, Solan.	27-10-2010
11	46/2010	Rajinder Kumar Vs M.D. M/S Saini Hair Products Pvt. Ltd., Baddi, District Solan.	27-10-2010
12	39/2009	Narain Singh Vs DFO, Renuka Ji, Sirmour.	01-10-2010

13	133/2007	Rajinder Kumar Vs Secretary, HPSEB, Shimla & Ors.	08-11-2010
14	2/2010	Dalip Chaudhary Vs M.D. M/S Vaidya Nutraceuticals(P) Ltd., Barotiwala, Solan.	09-11-2010
15	29/2010	Bhanwar Kishor Vs M.D. M/S Vaidya Nutraceuticals(P) Ltd., Barotiwala, Solan.	09-11-2010
16.	29/2009	Dharam Dutt Vs S.E., HPPWD, Circle, Kasumpti, Shimla-9 & Ors.	08-10-2010

By order,  
Sd/-  
ACS (Labour & Employment).

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 72 of 2001.  
Instituted on 30-4-2001.  
Decided on 27-10-2010.

Jai Singh S/o Shri Partap Singh R/o Village Nihog, P.O Banethi, Tehsil Nahan, District Sirmour, HP.

*Petitioner.*

VS.

1. The Superintending Engineer, I&PH Circle, Nahah, District Sirmour, HP.
2. The Executive Engineer, I&PH Division, Nahan, District Sirmour, HP.

*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Sharma, Advocate.  
For respondent: Shri Jagdish Kanwar, Dy. DA.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

*“Whether Shri Jai Singh S/o Shri Partap Singh retrenched by the Executive Engineer, IPH Division Nahan, District Sirmour without complying section 25F of the ID Act, 1947 is legal and justified? If not, to what seniority, service benefits and relief Shri Jai Singh S/o Shri Partap Singh workman is entitled to?”*

2. In nutshell the case of the petitioner is that he was engaged as daily wage beldar in the IPH Division Nahan, in the year 1982 and continued as such upto the year, 1985, when his services were dispensed with illegally and arbitrarily without notice and compensation. In fact, he had completed 240 days of continuous service and for this reason, his disengagement was in contravention of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). Besides, the respondents did not follow the principles of last come first go and that the persons junior to him are still in service. Even, in the year, 1999 and 2000, some fresh engagements were made, in contravention of the provisions of section 25H of the Act. Since, his services were disengaged in contravention of the provisions of the Act, he deserves to be reinstated alongwith all the consequential service benefits including back wages.

3. The petition has been contested on having raised preliminary objections including maintainability. On merits, it has been asserted that the petitioner had joined the respondent in the month of May, 1984, in which year, he worked only for 183 days. In the year, 1985, he worked for 21 days. It has been denied that in any calendar year, he had completed 240 days and that his services were disengaged in contravention of the provisions of the Act. It has also been denied that juniors to him have been retained in service. The services of the petitioner had to be terminated on account of paucity of funds. Other allegations denied.

4. No rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 5.9.2010.

1. Whether the services of the petitioner have been terminated illegally and in unjustified manner in violation of the provisions of I.D Act as alleged?

OPP.....

2. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Accordingly in yes.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings.***

#### ***Issue no. 1***

7. It has been urged on behalf of the petitioner that the contention of the petitioner that he had continued to remain in service from 1982 till 1985 cannot be disbelieved, particularly for the reason that the record, in this regard, was not found traceable by the respondents. Ld. Counsel further contended that since, the petitioner had completed 240 days prior to his disengagement, the respondents were required to have complied with the provisions of section 25F of the Act which they failed to do in the instant case. Besides, from the evidence, on record, it is further quite clear that persons junior to him have been retained in service. Thus, for the failure of the respondents to have complied with the provisions of the Act, the petitioner is entitled to be reinstated alongwith all the consequential service benefits as well as back wages, Ld. Counsel urged.

8. On the contrary, it has been argued on behalf of the respondents that the petitioner has miserably failed to prove that before his retrenchment, he had completed 240 days in the preceding twelve calendar months. The respondents were required to comply with the provisions of section 25F, only, if the petitioner had proved to have completed 240 days. Ld. Dy. DA further submitted that in the petition, the names of the persons have not been mentioned, who, as per the petitioner, are junior to him. Moreover, no such record has been brought by him which may go to show that persons junior to him have either been retained or engaged after his retrenchment. In these circumstances, the petitioner has miserably failed to prove the noncompliance of the provisions of the Act.

9. The contention of the petitioner is to this effect that he had been engaged as daily wage beldar in the year, 1982 and continued as such till 1985, when his services were illegally dispensed with. As per the defence version, the petitioner had joined with the respondents in the month of May, 1984 and that his services were dispensed with, on account of paucity of funds, in the year, 1985, in which year, he had worked only for 21 days.

10. Undoubtedly, while appearing in the witness box as PW-1, the petitioner has supported this fact that he was engaged on 12.2.1982 and that his services were disengaged in the month of March, 1985 but on the record, he has not brought any documentary proof/evidence, in support of his such version, that in fact, he had been engaged on 12.2.1982. The respondents have brought, on record, his mandays chart, which is Ex. RA. The perusal of this document goes to show that initially, the petitioner had been engaged as chowkidar in the month of May, 1984 vide muster roll no. 204 and that in the said year, he worked for 183 days. Thereafter, in the year, 1985, he worked only for 21 days, as beldar, vide muster roll no. 190.

11. Shri Santosh Thakur (RW-1) has also supported this fact that the petitioner had worked in the year, 1984 for 183 days and in the year, 1985, for 21 days. According to him, Ex. RW-1/A, is the copy of his muster roll, which is correct as per the original, brought by him. After, 1985, the petitioner did not work with the respondents. In the cross examination, he stated not to have brought the muster roll of the petitioner pertaining to the years, 1982 to 1985, for the reason that the same are not available with their office.

12. From the documentary evidence, as referred to above, the respondents have proved this fact that the petitioner had, initially been engaged in the year, 1984, in which year, he worked for 183 days and that in the year 1985, when his services were disengaged, he had only worked for 21 days. I would like to observe that it was for the petitioner to have proved with documentary evidence that his services were engaged on 12.2.1982 and that when his services were disengaged, in the month of March, 1985, he had completed 240 days in the twelve preceding calendar months. It has been held by the ***Hon'ble Supreme Court in 2009 (120) FLR 1007, Ranip Nagar Palika Vs. Babuji Gabhaji, Thakore & others*** that:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove that the factum of being in employment of the employer”.***

To the similar effect, the law has been laid down by Hon'ble Supreme Court in 2008 LLR 549, Sita Ram & others Vs. Moti Lal Nehru Farmers Training Institute.

13. Undoubtedly, the Counsel for the petitioner has argued that since, the respondents have failed to produce the muster rolls of the petitioner, for the years, 1982 to 1985, but on that score, the evidence led by the respondents that the petitioner had only worked for 183 days in the year, 1984 and 21 days in 1985 cannot be disbelieved. Even, the petitioner has not examined any other person, who had been working with him, as beldar, or in any other capacity, on daily wages, to support his version that in fact, he had been engaged in the year, 1982 and continued as such till 1985, when his services were disengaged. Thus, I have no hesitation in holding that the petitioner has failed to prove that before his termination/retrenchment, he had completed 240 days in the twelve preceding calendar months. When such is the position, then it was not required of the respondents to have complied with the provisions of section 25F of the Act.

14. The other ground, which has been taken by the petitioner in order to assail/challenge his termination, is that the respondents have kept, in service, persons junior to him. He, while appearing in the witness box as PW-1, has named those persons to be Jagdish, Preetam, Hatinder and Anant Ram etc. In the cross examination, he has admitted not to have brought, on record, any such document to prove that the aforesaid are junior to him but explained that he had applied for the such record under the RTI Act. In the statement of Shri Santosh Thakur (RW-1), it has come that Shri Jagdish Singh and Harinder, who had been junior to the petitioner, were regularized in the year, 1995. He further made it clear that seniority of the beldars is maintained at Division level. He expressed his ignorance that in the years 1999 and 2000, fresh engagements were made in the Division. It is true that the petitioner has not brought, on record, any such document which could go to show that aforesaid Jagdish Singh and others are junior to him but from the statement of Shri Santosh Thakur (RW-1), it is highlighted that they are junior to him. It may be observed that when, the petitioner has taken a specific plea that persons junior to him have either been retained by the respondents or fresh persons were engaged after his retrenchment, it was for the respondents to have brought, on record, the relevant documents in order to rebut such contention of the petitioner. In the absence of such record, having been brought by the respondents, I have no hesitation in holding that S/Shri Jagdish Singh and Harinder are junior to the petitioner, as also admitted by Shri Santosh Thakur, RW-1. It has been held in *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903* that:

***“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act”.***

15. For my above discussion and law laid down by the Hon'ble High Court (supra), I hold that the services of the petitioner had been terminated/disengaged, illegally and in an unjustified manner and that too without complying with the provisions of the Act viz. section 25 G & H.

16. Now, the next question which is required to be ascertained as to what service benefits, the petitioner is entitled to. At the very outset, I would like to point out that although the petitioner was disengaged in the year, 1985 but it appears that he had raised the industrial dispute after a lapse of more than ten years. May, it also be observed that the reference which has been made to this Court, by the appropriate government, was instituted on 30.4.2001. It further needs to be pointed out that the aforesaid reference which was instituted on 30.4.2001 and caused to be registered as reference no. 72/2001, was dismissed by this Court on 16.6.2003, for the failure of the petitioner or his counsel to have put their presence before this Court. Thereafter, petitioner, filed, an application for getting the aforesaid reference restored on 25.6.2009 and the same was registered as Misc. App. 18/2009. Thus, it is quite apparent, on record, that even, the petitioner filed application for the restoration of the reference (72/2001) after about six years. His application for getting restored the reference was allowed on 20.5.2010. Further, it is to be noted that neither in his statement of claim, the petitioner has averred that he is unemployed or not gainfully employed nor he stated so while appearing in the witness box as PW-1. It has been held by the *Hon'ble Supreme court in 2010 (1) SLJ SC 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry”.***

17. In view of the evidence, on record, and case law (supra), I am of the considered view that the petitioner is not entitled to be granted back wages.

18. It is true that the disengagement of the petitioner has been held by him to be illegal and improper but when regard is given to this fact that he had raised the industrial dispute after more than ten years from the date of his disengagement and further that he took about six years in order to get the reference restored which was dismissed on 16.6.2003, I am of the view that he deserves to be given seniority and continuity in service from the date when he had filed an application for the restoration of the reference i.e w.e.f. 25.6.2009. Accordingly, my answer to this issue is in “Yes”.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, *w.e.f.* 25.6.2009. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th October, 2010 in the presence of parties counsels.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, SHIMLA

Ref no. 2 of 2010.  
Instituted on.12.4.2010.  
Decided on. 9.11.2010.

Dalip Chaudhary S/o Shri Mahinder Chaudhary C/o Shri Aananth Choudhery, Near High School, Village Maranwala, P.O Nanakpur, Tehsil Kalka, District Panchkula (HR).

*Petitioner.*

VS.

The Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP.

*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.

For respondent: Shri Rupesh Sharma, Advocate.

**AWARD**

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the termination of the services of Shri Dalip Chaudhary S/o Shri Mahinder Chaudhary by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to”?***

2. At the very out set, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Dalip Chaudhary S/o Shri Mahinder Chaudhary) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record. As, no statement of claim has come on record, on behalf of the petitioner, the respondent also did not file any rely, pursuance to the reference, which has been made by the appropriate government.

It is highlighted that the services of Shri Dalip Chaudhary (petitioner) were terminated *w.e.f.* 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference

deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th November, 2010.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 3 of 2010.  
Instituted on.12.4.2010.  
Decided on. 27.10.2010.

Ajay Singh S/o Shri Naresh Singh C/o Shri Aananth Choudhery, Near High School, Village Maranwala, P.O Nanakpur, Tehsil Kalka, District Panchkula (HR).

*Petitioner.*

VS.

The Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP.

*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.

For respondent: Shri Rupesh Sharma, Advocate.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the termination of the services of Shri Ajay Singh S/o Shri Naresh Singh by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to?”***

2. At the very out set, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Ajay Singh S/o Shri Naresh Singh) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record.

As, no statement of claim has come on record, on behalf of the petitioner, the respondent also did not file any rely, pursuance to the reference, which has been made by the appropriate government. It is highlighted that the services of Shri Ajay Singh (petitioner) were terminated w.e.f. 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence**

**before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th October, 2010.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 15 of 2007  
Instituted on.8.3.2007.  
Decided on. 7.10.2010.

Nagin Chand S/o Shri Keshaw Ram through Sate Organizing Secretary, Him Shakti, PWD Karamchhari Sangh, HP O/O Mechanical Sub Division, HPPWD, Kamla Nagar Shimla-171006.

*Petitioner.*

VS.

1. Government of HP through Secretary, HPPWD.
2. Engineer-inChief, HPPWD Shimla, HP.
3. Assistant Engineer, Sub Divison, Darlaghat, District Solan, HP.
4. Junior Engineer, NH Division, Shalaghat, District Solan, HP.
5. Executive Engineer, NH Division, Solan, HP.
6. Anil Kumar S/o Shri Ghinna Ram, Work Inspector/Supervisor, Division Chamba, Distrcit Chamba HP.

*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Virender Kanwar, Advocate.

For respondent: Smt. Sangeeta Mishra, Ld. ADA.

#### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the demand raised by Sate Organizing Secretary, Him Shakti, PWD Karamchhari Sangh, HP O/O Mechanical Sub Division, HPPWD, Kamla Nagar Shimla-171006 through their demand notice dated 3.10.2002 (copy enclosed) from the Executive Engineer, National Highway Division, HPPWD Solan, HP not to promote Shri Nagin Chand S/o Shri Keshaw Ram beldar against the post of work inspector whereas junior to him Shri Anil Kumar S/o Shri Chinna Ram has been promoted w.e.f. 10.6.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If yes, what relief of service benefits the above aggrieved workman is entitled as per demand notice? If not, what its legal effects?”***

2. In nutshell the case of the petitioner is that he was appointed as beldar on 2.11.1998, on daily wages, and posted at By-pass Sub Division, Dhalli, Shimla, HP. Thereafter, in the month of Jan., 1999, he was given the work of work inspector/supervisor in the department of the respondents. It is averred that **Shri Anil Kumar (hereinafter referred as respondent no.6)**, who was engaged in the department of respondents, in the year, 2000, was promoted as work inspector/supervisor on 17.1.2002, despite the fact that he was junior to him (petitioner). In this way, respondent no.6 started getting wages @ Rs. 75/-, whereas, the petitioner kept on getting wages @ Rs. 65/-. Thus, the respondent department committed a wrong by promoting respondent no.6, contrary to the basic provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). It is further averred that the respondent department also started humiliating him by issuing various frivolous letters with regard to his working and even did not allow him to perform his duties, properly, when it came to know that he had raised a demand notice. Faced with such a situation, he was left with no



other alternative but to have got issued a legal notice dated 16.6.2007, to the respondent department. Against this backdrop, a prayer has been made for setting aside the promotion order dated 17.1.2002 of respondent no.6 and further to direct the respondent department to appoint him as work inspector/supervisor, in his (respondent no.6) place.

3. The petition has been contested on having raised various preliminary objections including maintainability, bad for delay and latches and also non joinder of necessary parties. On merits, it has been asserted that the petitioner has failed to mention as to which provision of the Act, has been contravened/violated by the respondent department, in appointing respondent no.6, as work inspector/supervisor. As far as respondent no.6 is concerned, he is a resident of District Chamba and was initially engaged by Executive Engineer, N.H Division Rampur, during the year, 1999. As far as petitioner is concerned, he was engaged on 2.11.1998, in N.H Sub Division Dhalli, by the Executive Engineer, NH Division, Solan. In this way, both the aforesaid were engaged in different Divisions i.e NH Division Rampur (respondent no.6) & NH Division Solan (petitioner). It is further maintained that although, respondent no.6 continued to work upto 8/2001, in NH Division Rampur but due to non availability of work, he was offered job, elsewhere, which he accepted and with the result, he was engaged in Katrain Sub Division under NH Division Pandoh from 9/2001 to 12/2001. Thereafter, since the work of work inspector/supervisor became available with Assistant Engineer, Sub Division, Dhalli, he was offered the job and engaged as fresh. Thereafter, he continued to work since 1.1.2002 to 9/2003, in different capacities i.e. beldar and work inspector/supervisor, as per the availability of work. However, w.e.f. 10/2003, he (respondent no.6), is serving as daily wage work inspector with Executive Engineer, HPPWD, Chamba. It is further asserted that for daily wage engagements, there are no instructions to give preferential right to senior daily wager, if the work of higher category is available and some other person is freshly recruited, against the same. As far as R&P Rules and Instructions are concerned, those are applicable to the employees, in regular categories, and not to those who are on daily wages. Thus, the fresh engagement of respondent no.6, as work inspector, in the year, 2002, gives no cause of action to the petitioner because his engagement, as such, had been made by the employer solely as per his administrative discretion, keeping in view his performance. Further, as far as seniority of daily wagers is concerned, it is maintained at Division wise and not Circle/State wise.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.7.2008.

1. Whether Shri Nagin Chand S/o Shri Keshaw Ram beldar has not been promoted against the post of work inspector w.e.f. 10.6.2002 whereas junior to him Shri Anil Kumar S/o Shri Chinna Ram was promoted without complying the provisions of Industrial Disputes Act, 1947, as alleged?

OPP.....

2. If issue no.1 is not proved in affirmative, to what relief the petitioner is entitled to and since when?

OPP.....

3. Whether this petition is barred due to delay and latches?

OPR.....

4. Whether the petition is bad for non joinder of necessary parties?

OPR.....

5. Whether the present petition is not maintainable under the Industrial Disputes Act?

OPR.....

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no. 4.	No.
Issue no.5.	No.
Relief.	Reference answered against the petitioner, per operative part of award.

#### ***Reasons for findings.***

##### ***Issue no.1***

8. Admittedly, the petitioner was engaged as daily wage beldar on 2.11.1998, in NH Sub Division, Dhali, falling under Executive Engineer, NH Division Solan, HPPWD. Although the petitioner has alleged that

respondent no.6, had been engaged in the respondent department in the year, 2000 but from the reply, filed by the respondents, it is highlighted that, in fact, he had been engaged in the year, 1999, by Executive Engineer NH Division, Rampur. In this way, there remains no dispute between the parties that as far as petitioner is concerned, he had been engaged earlier to respondent no.6. This fact also remains undisputed that both the petitioner and respondent no.6, had been engaged in different NH Divisions. From the stand, taken by the respondent department, it is also revealed that the seniority of the daily wagers is maintained at Division level and not at Circle/State level. The petitioner has felt aggrieved by the appointment/promotion of respondent no.6, as work inspector/supervisor, in Dhalli sub division, in the year, 2002, for the reason that he was junior to him.

9. While appearing in the witness box as PW-1, the petitioner has supported his case on all materials particulars, including that respondent no.6, who was junior to him, was promoted as work inspector by the department by ignoring his seniority/claim. In the cross examination, he has stated that he has been working in Solan Division whereas respondent no.6 had earlier worked in Rampur Division. He denied that respondent no.6 had joined, at Chamba, after the completion of work at Pandoh and NH Dhalli, on fresh engagement. He further denied that he (respondent no.6), had been appointed as work inspector as fresh at Chamba, on the availability of work.

10. Shri Sanjay Gupta (RW-1), has also supported the defence version, on all material counts. He has specifically stated that the petitioner had never been engaged or given work of work inspector/supervisor by the department and that his mandays chart is Ex. RA. He had kept on working as beldar, from the date of his initial engagement till his services, as such, were regularized. The seniority of the daily wagers is maintained at Division level. Since, respondent no.6, had been engaged by Executive Engineer, NH Division Rampur, in May, 1999, his employer was different from that of the petitioner. He (PW-1) further supported this fact that respondent no.6, who continued to be engaged with Executive Engineer NH Rampur till August, 2001 was offered job in NH Pandoh where he worked from September, 2001 to December, 2001. Thereafter, when the work of work inspector became available in NH Division, Solan with Assistant Engineer Sub Division Dhalli, he was offered the job and was engaged afresh. W.e.f October, 2003, he (respondent no.6) has been working as daily wage work inspector with Executive Engineer, Chamba Division. There are no such instructions as to give preference to some senior worker if the work of higher category became available and some other person is engaged afresh. Thus, the engagement of respondent no.6, in the year, 2002, as work inspector, did not give any right to the petitioner in order to stake his claim to the said work. Moreover, respondent no.6 had been offered job of work inspector, as per its availability, and also the administrative decision of the concerned Executive Engineer. In the cross examination, he admitted that the seniority is counted within the same department and that the work of inspector was available at NH Sub Division, Dhalli, when respondent no.6 was engaged, in the year, 2002. He denied that seniority of daily wager is counted circle wise. He admitted that the wages of the work inspector are more than that of beldar.

11. From the statement of Shri Sanjay Gupta (RW1), it has been revealed that before being engaged afresh as work inspector/supervisor, in the year, 2002 (1.1.2002) respondent no.6, who had been initially engaged as daily wage beldar at NH Division, Rampur, in the month of May, 1999, had also worked as such in NH Division Pandoh from September, 2001 to December, 2001. Thus, on the record, it is quite clear that the petitioner and respondent no.6, had remained engaged in different Divisions of NH. Although, the contention of the petitioner is to this effect that the seniority of a daily wager is maintained at circle level but in support of his such plea, he has not brought, on record, any document/rule/instructions. On the contrary, it has been specifically stated by Shri Sanjay Gupta (RW-1), that seniority of the daily wagers is maintained at Divisional level. In these circumstances, when the petitioner and respondent no.6, had been engaged in different Divisions, their seniority are to be considered/determined at respective Division levels and not at State/Circle level. Moreover, in the statement of Shri Sanjay Gupta (RW-1), it has come that when the work of work inspector became available in NH Sub Division Dhalli, respondent no.6 was appointed afresh against the same, on daily wage basis. The petitioner has failed to bring, on record, any such rule/instructions which could go to show that for his being senior to respondent no.6, as daily wage beldar, working in different Divisions, he was required to be given preference while being engaged as work inspector in NH Dhalli Sub Division where respondent no.6 was engaged w.e.f. 1.1.2002. Be it stated that R & P Rules are not applicable as far as daily wagers are concerned. It is true that as far as the wages of work inspector are concerned, those are higher than that of beldar but on that ground the engagement of respondent no.6, as work inspector/supervisor, cannot be held to be illegal because he was allegedly junior to the petitioner. In case, the petitioner had brought, on record, any such rule/instructions, as per which, a senior daily wager was required to be given preference, for being engaged to a work having more wages, the contention of the petitioner that he had a preferential right to be engaged as work inspector/supervisor could have been relevant/material.

12. In the instant case, the petitioner could also not prove that by engaging respondent no.6, as work inspector/supervisor, the respondent department has violated any of the provisions of the Act including section 25F, 25G & H. In these circumstances, I disagree with the Ld. Counsel for the petitioner that the respondent department has contravened the provisions of the Act by promoting respondent no.6, a junior, as work inspector/supervisor. Thus, I hold that the petitioner has failed to prove this issue, to which my answer is in "No".

**Issue no.2**

13. In view of my findings on issue no.1 above, this issue becomes redundant.

**Issue no.3**

14. In support of this issue, no evidence was led by the respondents being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of *Hon'ble Supreme Court in a case, as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. as under:-*

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

In view of the above cited ruling, this petition is held not to be barred due to delay and latches. Thus, my answer to this issue is in “No”.

**Issue no.4**

15. No doubt, an objection has been taken by the respondent that the claim of the petitioner is bad for non joinder of necessary parties, particularly, that Executive Engineer, HPPWD Chamba has not been impleaded in this case but keeping in view all the facts and circumstances particularly that Secretary, HPPWD, has been impleaded as party, I am of the view that the claim of the petitioner is not bad for non joinder of necessary parties. By holding so, my answer to this issue is in “No”.

**Issue no.5**

16. It is not understandable as to why the present petition is not maintainable under the Act, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondents could not explain as to why this petition, is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in “No”.

**Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against him and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 7th October, 2010 in the presence of parties counsels.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 23 of 2010.  
Instituted on.12.4.2010.  
Decided on. 27.10.2010.

Dinesh Kumar S/o Shri Ram Shree C/o Shri Aananth Choudhery, Near High School, Village Maranwala, P.O Nanakpur, Tehsil Kalka, District Panchkula (HR).

*Petitioner.*

VS.

The Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP.

*Respondent.*

For petitioner: None.

For respondent: Shri Rupesh Sharma, Advocate.

### **AWARD**

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the termination of the services of Shri Dinesh Kumar S/o Shri Ram Shree by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to?”***

2. At the very out set, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Dinesh Kumar S/o Shri Ram Shree) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record.

As, no statement of claim had come on record, on behalf of the petitioner, the respondent also did not file any rely, pursuance to the reference, which has been made by the appropriate government.

It is highlighted that the services of Shri Dinesh Kumar (petitioner) were terminated w.e.f. 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th October, 2010.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 25 of 2009  
Instituted on. 4.4.2009.  
Decided on. 18.10.2010.

Ram Saran Dass S/o Shri Bardu Ram R/o Village Ber Gaon, P.O Chambaghat, Tehsil & District, Solan, HP.

*Petitioner.*

VS.

The President/General Secretary, Kalka Shimla Goods Transport Union, The Mall Solan below Central Library, The Mall, Solan, HP.

*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri O.P Chauhan, Advocate.  
For respondent: Shri Sunil Chauhan, Advocate.

**AWARD**

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the verbal termination of services of Shri Ram Saran Dass S/o Shri Bardu Ram, clerk, w.e.f. 1.8.2007 by The President/General Secretary, Kalka Shimla Goods Transport Union, The Mall Solan below Central Library, The Mall, Solan, HP without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what back wages, service benefits and relief the above workman is entitled to?”***

2. Briefly the case of the petitioner is that he was appointed as clerk by the respondent w.e.f. 1.9.1978 in the pay scale of Rs. 300/- per month and continued to remain as such till 31.7.2007, when his services were, all of a sudden, retrenched, verbally on 1.8.2007 by telling that he was not required to come to the office, to do work. It is alleged that while terminating his services, in the manner aforesaid, neither he was issued any show cause notice nor chargesheet. Even, the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act) were not complied with. Further, the respondent also denied him increment of Rs. 400/-, from November, 2005 and later on of Rs. 300/- from 1.4.2007. In this way, he was also discriminated. Even, his wages w.e.f. 1.4.2007 till 31.7.2007 @ Rs. 3500/- per month were not paid to him despite the fact that he had been regularly discharging his duties. Besides, his gratuity and pension were also not released by the respondent. Against this backdrop, a prayer has been made for his reinstatement with all the consequential benefits alongwith back wages.

3. The petition has been contested on having raised preliminary objections including maintainability and that the respondent is not an industry under the Act. On merits, it has been denied that the petitioner had been appointed as clerk w.e.f. 1.9.1978 and that he remained in the employment of the respondent till 31.7.2007. In fact, he had been a registered member of the respondent w.e.f. 16.3.1982 vide registration no. 746 having vehicle no. HPA-4345. Since, he was the member of the union, he could not have become the workman of the respondent. Further, there had been no question of his having been engaged as a clerk, as alleged, when he being the member of the respondent union, had been getting profits from the use of his aforesaid vehicle. It is further maintained that only those members, who are the office bearers or assisting the working of the respondent union, are entitled for honorarium. Being, a member of the union, the petitioner, like others, was also working as such and he was being paid honorarium for the same. In the month of March, 2007, he left the union, on his own. Thus, no question arises of his having been retrenched, verbally, on 1.8.2007. It has been specifically denied that there has been violation of section 25 of the Act, in any manner, by the respondent. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.2.2010.

1. Whether the verbal termination of services of Ram Saran petitioner w.e.f. 1.8.2007 by the President/General Secretary, Kalka Shimla Goods Transport Union, The Mall Solan without complying the provisions of Industrial Disputes Act, 1947, is illegal and unjustified as alleged?

OPP.....

10. If issue no.1 is proved, to what back wages and relief the petitioner is entitled to?

OPP.....

11. Whether the claim is not maintainable as alleged?

OPR.....

12. Whether the claim is beyond the jurisdiction of this Tribunal as alleged?

OPR.....

13. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes

Issue no.2	Entitled to reinstatement with seniority and continuity alongwith back wages @ 25%.
Issue no.3	No.
Issue no.4.	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

### *Reasons for findings.*

#### *Issue no.1*

8. Learned counsel for the petitioner has submitted that the plea of the petitioner that he had been in continuous service of the respondent w.e.f. 1.9.1978 till 31.7.2007 has been duly proved, on record. Since, w.e.f. 1.8.2007, his services had been terminated/retrenched, verbally, without notice and compensation, the respondent violated the provisions of the Act and for this reason, his termination is illegal and unjustified.

9. On the other hand, it has been urged on behalf of the respondent that since the petitioner was the member of the respondent union, for this reason, he could not have been engaged/appointed as clerk. Thus, no question arose of his having been retrenched in the manner, as alleged. Ld. Counsel further submitted that being the member of the respondent union, the petitioner had been earning profits by plying his vehicle/truck. In fact, the petitioner being a member of the respondent union, had stopped coming after March, 2007 to work on honorarium and thus there was no occasion for the respondent to have terminated his services, Ld. Counsel submitted.

10. The petitioner while appearing in the witness box, as PW-1, has stated that in the year, 1978, *vide* Ex. PW-1/A, he had been engaged/employed by the respondent, as clerk. Even, prior to that, he had also been working as temporary clerk in the respondent union for the last 10/15 years. When he was employed in the year, 1978, his salary was Rs. 300/- and that in the year 2007, he was terminated, from service, without notice/chargesheet. He was also not paid any GPF and other benefits/dues. He was also not given annual increments for the last 4/5 years. When his services were terminated, he was getting monthly salary of Rs. 2,800/-. In the cross examination, he admitted to be the member of the respondent union but explained that the membership was in the name of his son who was having Truck No. 2345. In the membership register of the respondent union, his name has been registered. He denied to have extended his services to the respondent union as member of its executive body. He does not remember that on 16.3.1982, he became the member of the union *vide* registration no. 746. He denied that Ex. PW-1/A is forged and that as a member of the respondent union, he had been helping in the account matters without receiving any pay. He further denied that he was not the regular/part-time employee of the respondent union. His age is 90 years. He does not know that respondent union retires its employees at the age of 65 years. He further denied that he was not being paid any salary for the work being done by him.

11. Shri Prem Singh (PW-2), has been a member of the respondent union since 1993. Prior to that in the year, 1976, he had joined the respondent union as Driver. He knows the petitioner, who at that time, when he joined, as Driver in the union, was working as a clerk in the respondent union. The petitioner has no vehicle in his name but he was the employee of the union. From 10.00 AM to 5.00 PM, he (petitioner) used to work in the union office. In the cross examination, he admitted that, whosoever is a member of the respondent union, he cannot be engaged as employee or workman. The members of the respondent union look-after its working without getting any money. He denied that the petitioner had been rendering his services to the respondent union, being its member, without getting any salary.

12. Although, the defence version is to this effect that since, the petitioner was the member of the union, he could not have been engaged as its employee/worker but on the record, the petitioner has placed, office order dated 1.9.1978, Ex. PW-1/A, issued by Shri Shiv Dutt Bhardwaj, President, which goes to show that he had been appointed as clerk, on consolidated salary of Rs. 300/- per month. As far as this document Ex. PW-1/A is concerned, the petitioner, while appearing in the witness box as PW-1, was suggested that it is a forged document but I may observe that the respondent has failed to lead any evidence either in order to rebut the evidence led by the petitioner, and also that this document, Ex. PW-1/A is a forged one. For the failure of the respondent to have led evidence, despite having been afforded several opportunities, the evidence which has been led by the petitioner has gone un-rebutted especially as far as office order Ex. PW-1/A is concerned. On the face of this document, the defence version that the petitioner, for his being the member of the respondent union, could not have been employed in the respondent union, does not hold good. It has been specifically stated by the petitioner (PW-1) that he had continued to remain in the service, as clerk, with the respondent union from the year, 1978 till 2007, when his services were terminated without notice and chargesheet. Shri Prem Singh (PW-2) has also supported this fact that when he joined the respondent union, as driver, at that time, the petitioner was working as a clerk in the union. His such version goes to corroborate the version of petitioner (PW-1) that he had been in the service of the respondent union since, 1978. Further, this witness (PW-2) has

supported this fact that he had even seen the petitioner working in the respondent union till 2005. I may mention that even, respondent admits this fact that the petitioner had stopped coming to the respondent union, as member, w.e.f. March, 2007. From this version, it is quite clear that the respondent union admits this fact that till March, 2007, the petitioner had remained associated with the working of the union not as a worker/clerk but as a member. When, the petitioner has proved from Ex. PW-1/A that he had been appointed/engaged as clerk on 1.9.1978, on consolidated salary of Rs. 300/-, the defence plea that he had been helping the affairs of the respondent union, as member, cannot be believed. At this stage, I would like to mention that the respondent has not led any evidence, whatsoever, which could go to show that for rendering services to the respondent union, as member, the petitioner was being paid honorarium and not salary as is its defence. In the absence of such evidence/proof, the version of the petitioner that he had continued to remain in the service of the respondent union as clerk w.e.f. 1.9.1978, as is evident from Ex. PW-1/A, till 31.7.2007, as stated by him (PW-1) while appearing in the witness box, cannot be disbelieved.

13. It is true that in the statement of the petitioner, it has come that he is 90 years of age. On this score, his claim cannot be declined, particularly, when it has been proved, on record, that he had continued to remain in service in the respondent union as clerk till the year, 2007 (31.7.2007) as alleged in the claim petition. A suggestion has been given to the petitioner (PW-1) that in the respondent union, an employee is retired after 65 years of age. It is to be noted that, on record, no such document/rule has been brought which could go to show that the retirement age of an employee, engaged by the respondent union, is 65 years. On the contrary, when it is abundantly clear that the petitioner had continued to remain in the service of the respondent union till July, 2007 despite the fact that he had crossed the age of 65 years, I am of the considered view that on this count, the respondent cannot get any benefit.

14. The question, which is to be ascertained by this Court, is not as to whether the petitioner had continued to remain in service after having attained the age of 65 years but as to whether, his services were terminated in contravention of the provisions of the Act or not. From the statement of the petitioner (PW-1), it is further borne out that he had been in continuous service of the respondent, in terms of the provisions of the Act. It is also not a disputed fact that before terminating/retrenching his services, neither any notice or chargesheet had been served upon him nor an enquiry was got conducted. When such is the position, definitely, the respondent was required to issue one month's notice stating therein the reasons for terminating/retrenching the services of the petitioner or in lieu thereof to pay him salary for the period of notice besides retrenchment compensation. It has been stated by the petitioner that when his services were terminated, his monthly salary was Rs. 3,800/-. The respondent was required to have paid retrenchment compensation to the petitioner as per the salary which he was drawing at the time of his retrenchment *i.e.* 3,800/- and also one month's salary in lieu of the notice as per the requirement of section 25F of the Act. Since, the services of the petitioner were retrenchment/terminated w.e.f. 1.8.2007, in contravention of the provisions of the Act, I hold that the same is illegal and unjustified. Accordingly, my answer to this issue is in "No".

#### **Issue No. 2.**

15. It has been stated by the petitioner that since the time he has been retrenched/terminated, he is not employed elsewhere. His such version has gone unchallenged. I may reiterate that the respondent has failed to lead any evidence despite having been afforded opportunities. Thus, on the record, it stands proved that the petitioner, since the time of his retrenchment, is not gainfully employed. However, keeping in view of all the facts and circumstances of the case, I am of the view that he deserves to be granted back wages @ 25%. Since, while deciding issue No.1, it stands proved, on record, that the services of the petitioner had been terminated in contravention of the provisions of the Act, he is entitled to be reinstated with seniority and continuity alongwith back wages @ 25%. Accordingly, my answer to this issue is in "Yes".

#### **Issue no.3 & 4.**

16. Both these issues are being taken up together for discussion being interlinked and correlated, in order to avoid repetition. Learned Counsel for the respondent has argued that since, the respondent is not an industry, within the definition of the Act, the petitioner, cannot be said to be a workman. On the other hand, learned counsel for the petitioner submitted that since, the services of the petitioner were retrenched/terminated without notice and compensation, the respondent violated the provisions of the Act and as such, the claim of the petitioner is legally maintainable for his being a workman under the respondent. While deciding issue no.1, I have already held that the petitioner had been engaged as a clerk by the respondent. From the stand taken by the respondent, it is further, abundantly, clear that the petitioner had left the respondent union, on his own, w.e.f. March, 2007. This goes to show that even the respondent admits that the petitioner had remained associated with the respondent union, not as a clerk but as a member. Already, it has been held by me that the petitioner had been engaged as a clerk by the respondent and he continued to remain as such till 31.7.2007, when his services were retrenched. It is true that the respondent has taken this objection that the respondent union is not an industry but having regard to the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa**, I am of the view that the respondent union fall in the definition of industry as far as petitioner is concerned,

who is considered to be a workman. In the case law (supra) it has been held by the Hon'ble Supreme Court that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondent is governed by the Act.

17. Considering the legal position and also this fact that the respondent has failed to lead any evidence despite having been afforded several opportunities, I am of the view that the claim of the petitioner is maintainable and that the same is within the jurisdiction of this Tribunal. Consequently, both these issues, under discussion, are answered in negative.

### **Relief.**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity alongwith back wages @ 25%, from the date of his termination i.e 31.7.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th October, 2010 in the presence of parties counsels.

A.S JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref. no. 29 of 2009.  
Instituted on.17.4.2009.  
Decided on. 8.11.2010.

Dharam Dutt S/o Shri Krishan Dutt R/o Village Ghodup, P.O Dhami, Tehsil & District Shimla, HP.

. .Petitioner.

VS.

1. Superintending Engineer (PWD) Electrical Circle Kasumpti, Shimla-9.
2. The Executive Engineer, Electrical Division No-II, Kasumpti, HPPWD, Shimla-9. . Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Ravinder Singh Jaswal, Advocate.

For respondent: Shri Jagdish Kanwar, Dy. DA.

### **AWARD**

1. The reference for adjudication, sent by the appropriate government, is as under:-

**“Whether the termination of Shri Dharam Dutt S/o Shri Krishan Dutt by the Executive Engineer, Electrical Division No.II, Kasumpti, HPPWD, Shimla-9 w.e.f. 30.9.2001 without complying the provisions of the Industrial Disputes Act, 1947 and retaining the workers who were junior to him, is legal and justified? If not, what relief of service benefits including seniority, compensation the above aggrieved workman is entitled to?”**

2. Briefly, the case of the petitioner is that he was initially appointed as daily wage beldar with respondent no.2 w.e.f. 1.1.1997 and continued, as such, till 31.5.1998. On 1.6.1998, his services were illegally disengaged/terminated without any notice or paying compensation. During the aforesaid period, he had completed 240 days. Against his disengagement, he had filed OA no. 915/1998 before HP State Administrative Tribunal and the same was allowed as per order dated 14.7.1999 with the result, the respondents were directed to reengage him. Thus, on



24.7.1999, he was reengaged by respondent no.2 and continued to remain in job till 30.9.2001, when again, without serving any notice and paying compensation, his services were terminated/retrenched. In the preceding year, he had also completed 240 days. Faced with such situation, he again filed an OA before the Administrative Tribunal which was registered as OA no. 3110/2001 but the same was rejected vide order dated 25.7.2006 for want of jurisdiction. In its order, the Tribunal had clarified that the petitioner could have sought relief from appropriate forum. Thus, he raised the Industrial Dispute which resulted in making reference, in question, to this Court. It has also been averred that juniors to him, have either been engaged or their services regularized by the respondents. Since, his services were illegally terminated w.e.f. 30.9.2001, he deserves to be reengaged alongwith all the consequential benefits including back wages.

3. The petition has been contested on having raised preliminary objection qua maintainability and limitation. On merits, it has been admitted that the petitioner had been appointed as daily wage beldar w.e.f. 1.1.1997 but it has been denied that his services were retrenched/terminated on 31.5.1998. In fact, respondent no.2 had issued muster roll for electrical beldars w.e.f. 1.6.1998 to 30.6.1998 but the petitioner, on his own, without intimating the department, did not report for duties/job. It has also been specifically denied that he had completed 240 days w.e.f. 1.1.1997 to 31.5.1998. Consequent upon the passing of the order by State Administrative Tribunal, the petitioner was reengaged on 24.7.1999 but his services had to be disengaged/terminated, on account of paucity of funds, w.e.f. 30.9.2001, on having complied with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). It has been specifically pleaded that vide letter no. 2349 dated 29.8.2005, he had been served with one month's notice which was duly received by him on 30.8.2001. It has been denied that juniors to him have either been engaged or regularized except one Shri Murari Lal, who had been engaged as per order dated 15.10.2008, passed by this Court (Labour Court) in case no. 232. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 16.4.2010.

1. Whether the services of petitioner have been terminated illegally and in an unjustified manner?

. .OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits and amount of compensation, the petitioner is entitled to?

. .OPP.

3. Whether this petition is time barred?

. .OPR.

4. Relief.

6. I have heard the learned counsel for the petitioner and learned Dy. DA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue No.1***

8. Admittedly, when the services of the petitioner had initially been disengaged w.e.f. 1.6.1998, he had filed OA No. 915/1998 and the same was allowed as per order dated 14.7.1999, the copy of which is Ex. PA and in consequence thereof, he was reengaged w.e.f. 24.7.1999. It is also not a disputed fact that, again the services of the petitioner were terminated/disengaged on 30.9.2001. However, the defence version is to this effect that his services had to be disengaged on account of paucity of funds and before doing so, the relevant provisions of the Act had been duly complied with because one month's notice had been issued to the petitioner which was duly received by him. I may make it clear that there is no dispute between the parties as far as the completion of 240 days, by the petitioner, is concerned, preceding twelve calendar months from the date of his termination. This fact is abundantly clear from his mandays chart, which is Ex. PC (also Ex. RB-1).

9. Now, the question which arises is as to whether the services of the petitioner had been disengaged/retrenched by complying with the provisions of section 25F of the Act or not. For convenience, it is desirable to reproduce section 25F, which is as under:

25F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until - (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

10. When, regard is given to the statement of petitioner (PW-1), it is abundantly clear that he has supported all the material facts including that without notice/compensation his services were terminated and further that one Shri Murari Lal who is junior to him, is still in service. He expressed his lack of knowledge that the notice dated 29.8.2001 (Ex. RA) had been received by him but admitted that Ex. RB bears his signatures, encircled red.

11. Shri Kulbhushan (RW-1), besides having supported the defence version, has further made it clear that a letter dated 29.8.2001, Ex. RA, had been issued to the petitioner under section 25F of the Act, which had been received by him, on 30.8.2001, whereby, he had been intimated that on account of paucity of funds, his services were to stand disengaged w.e.f. 30.9.2001. The retrenchment compensation had also been calculated which was to be received by him from the office of SDO. In the cross examination, he admitted that in Ex. RA, the amount of retrenchment compensation has not been mentioned and that its copy was also not sent to the state government. He further made it clear that alongwith notice Ex. RA, no compensation had been paid to the petitioner.

12. From the evidence, which has been referred to above, it is highlighted that although a notice/letter Ex. RA, had been issued to the petitioner but alongwith the same, no compensation had been sent to him As per clause (b) of the aforesaid section, the retrenchment compensation was required to be calculated equivalent to fifteen days' average pay for every completed year for continuous service or any part thereof in excess of six months. In the instant case, the retrenchment compensation was required to be calculated from the initial engagement of the petitioner till his services were ultimately dispensed with because he had continued to remain in services for more than 240 days. From Ex. RA, it is abundantly clear that the petitioner had not been paid compensation as per clause (b) of section 25F of the Act. It is further to be noted that the respondents had also not served notice on the appropriate government as required by clause (c) of section 25F. In this way, it stands proved, on record, that the services of the petitioner w.e.f. 30.9.2001, had been terminated in contravention of the provisions of the Act.

13. From the evidence, on record, it is further borne out that one Shri Murari Lal, who is admittedly junior to the petitioner is still in service. For his being in service, also goes to show that the retrenchment of the services of the petitioner w.e.f. 30.9.2001, was in contravention of the provisions of section 25 G & H of the Act. Accordingly, retrenchment notice Ex. RA is set aside and quashed. Consequently, for my discussion above, my answer to this issue is in "Yes".

### **Issue No.2**

14. It has not been alleged by the petitioner that he is unemployed and not gainfully employed. Moreover, It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry". In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages.

15. Since, while deciding issue no.1, above, I have already held that the services of the petitioner had been terminated, illegally, without complying with the provisions the Act, I am of the view that he is entitled for reinstatement with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

### **Issue No.3.**

16. It could not be explained by the respondent as to why this petition suffers from inordinate delay and latches. Their lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another have held as under:

**“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

17. Consequently, in view of law laid down by Apex Court, I hold that this petition is not time barred, to which my answer is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages from the date of his illegal retrenchment i.e. w.e.f. 30.9.2001. Accordingly, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th November 2010 in the presence of parties counsels.

A.S JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 29 of 2010.  
Instituted on.12.4.2010.  
Decided on. 9.11.2010.

Bhanwar Kishor S/o Shri Dulare Ram C/o Shri Aananth Choudhery, Near High School, Village Maranwala,  
P.O Nanakpur, Tehsil Kalka, District Panchkula (HR). . Petitioner.

VS.

The Managing Director, M/s Vaidya Nutracuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala,  
District Solan, HP. . Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.  
For respondent: Shri Rupesh Sharma, Advocate.

#### **AWARD**

1. The reference for adjudication, sent by the appropriate government, is as under:-

***“Whether the termination of the services of Shri Bhanwar Kishor S/o Shri Dulare Ram by the Managing Director, M/s Vaidya Nutracuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to”?***

2. At the very outset, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Bhanwar Kishor S/o Shri Dulare Ram) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record.

As, no statement of claim has come on record, on behalf of the petitioner, the respondent also did not file any reply, pursuant to the reference, which has been made by the appropriate government.

It is highlighted that the services of Shri Bhanwar Kishor (petitioner) were terminated w.e.f. 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th November, 2010.

A.S JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 37 of 2010.  
Instituted on.12.4.2010.  
Decided on. 27.10.2010.

Upender Kumar S/o Shri Giri Singh C/o Shri Aananth Choudhery, Near High School, Village Maranwala, P.O Nanakpur, Tehsil Kalka, District Panchkula (HR). .Petitioner.

VS.

The Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP. .Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.  
For respondent: Shri Rupesh Sharma, Advocate.

#### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

***“Whether the termination of the services of Shri Upender Kumar S/o Shri Giri Singh by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to”?***

2. At the very out set, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Upender Kumar S/o Shri Giri Singh) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record. As, no statement of claim has come on record, on behalf of the petitioner, the respondent also did not file any rely, pursuance to the reference, which has been made by the appropriate government.

It is highlighted that the services of Shri Upender Kumar (petitioner) were terminated w.e.f. 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the

petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 27th October, 2010.

A.S JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 39 of 2009  
Instituted on 27.4.2009.  
Decided on. 1.10.2010.

Narain Singh S/o Shri Singhe Ram R/o Village & P.O Nainidhar, Sub Tehsil, Rohnat, District Sirmour, HP.  
. .Petitioner.

VS.

The Divisional Forest Officer, Forest Division, Renukaji, District Sirmour, HP. . .Respondent.  
*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri O.P Sharma, Advocate Vice Shri Kamaljeet, Advocate.  
For respondent Shri Jagdish Kanwar, Dy. DA.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

***“Whether the termination of services of Shri Narain Singh S/o Shri Singhe Ram workman by the Divisional Forest Officer, Forest Division, Renukaji, District Sirmour, HP w.e.f. 1.8.2006 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation, the above aggrieved workman is entitled to?”***

2. Briefly, the case of the petitioner is that he had been initially engaged as daily wager w.e.f. 3.10.1988 at Rohnat and worked for 240 days in each calendar year. Since, one Shri Bir Singh had filed an OA before the State Administrative Tribunal bearing no. 2604/1999 titled as Bir Singh & others Vs. State of HP & others and that in the same, he was impleaded as respondent no.5 being junior to the petitioner (Bir Singh) therein, the department, in order to defeat the claim of said Bir Singh, also disengaged his services, being junior, without observing the mandatory provisions of law. This, he (petitioner) also filed an OA no. 2960/2000 titled as Narain Singh Vs. State of HP before the State Administrative Tribunal and that vide order dated 30.11.2001, his disengagement was held void-ab-initio and a direction was issued to the respondent to reengage him in the same capacity and same place or in the vicinity in terms of interim order already passed on 30.11.2000, with further directions that his services were not to be disengaged save and except in accordance with the law. Pursuance to the directions of the State Administrative Tribunal, the department had been reengaging and disengaging him. It is alleged that in order to harass him, he was being called to join duties but was not allowed to mark his attendance. With a view to deprive him from being regularized, the department had also been giving him fictional breaks in service. It is further maintained that w.e.f. August, 2006, his services had been disengaged without complying with the statutory provisions of law despite the fact that he had completed 240 days in each calendar year. Since, the respondent had disengaged his services against the provisions of section 25F, G & H of

the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested by admitting that during 10/98, the petitioner was engaged for seasonal casual work and that one Shri Bir Singh had filed an OA no. 2601/1999 but it has been specifically denied that his services had been disengaged and that he had completed 240 days in each calendar year (except 1999). In fact, he had left the job, on his own. As per the directions of the Tribunal, the respondent had reengaged him but he had again left the work, on his own. It has further been further denied that fictional breaks were being given to the petitioner and that the respondent had disengaged his services. Other allegations denied.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 27.4.2010.

1. Whether the services of the petitioner have been illegally terminated as alleged? . . . OPP.

2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? . . . OPP.

3. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Relief. Reference answered against the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue No.1***

7. It has been specifically alleged by the petitioner that his services had been disengaged by the respondent w.e.f. August, 2006 without complying with the statutory provisions of the Act. It is also not a disputed fact that consequent upon his filing an OA No. 2968 of 2000, it had been ordered by the Tribunal, vide order dated 30.11.2001, that the disengagement of the services of the petitioner were void-ab-initio and that the department had been directed to reengage him in the same capacity and place, in terms of interim order, already passed on 30.11.2000. The petitioner has also alleged that although in pursuance of the order of the Tribunal, he was being called for duties, but his attendance was not being marked.

8. On the contrary, the stand of the respondent is that the petitioner, on his own, left the job.

9. At the very outset, I would like to point out that initial onus is upon the petitioner to prove that in the month of August, 2006, his services were disengaged in contravention of the provisions of the Act and further that in the preceding twelve calendar months, from the date of his termination, he had completed 240 days. In support of his case, the petitioner (PW-1) has tendered his affidavit Ex. PA and also copy of order, passed by State Administrative Tribunal, Ex. PB. Undoubtedly, in his affidavit, he has supported all the material facts, as stated in the petition, but he has not filed the mandays chart in order to show that he had worked till August, 2006, when his services were allegedly disengaged by the respondent in contravention of the provisions of the Act. It is further to be noted that no such steps were taken by the petitioner in order to get summoned the relevant record from department in order to prove that in fact, he had worked till August, 2006 and that in every calendar, he had been completing 240 days. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

10. Similarly, it has been held by the Hon'ble Apex Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** that:—

***“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

11. In the statement of Shri Vijay Pal (RW-1), it has come that except the year, 1999, the petitioner had never completed 240 working days, in any calendar year and that the mandays chart Ex. RA is correct as per the original. He further made it clear that consequent upon the order of the Tribunal dated 30.11.2000, the services of the petitioner had been reengaged but again he left the job, on his own. The department had never disengaged his services. In the cross examination, he denied that after 30.11.2001, the petitioner had worked with the respondent in various beats and that during the period, neither he was paid any wages nor allowed to mark his attendance. He further denied that during the month of August, 2006, the services of the petitioner had been terminated without notice.

12. From the statement of Vijay Pal (RW-1), it is abundantly clear that after the passing of the order by Tribunal, the services of the petitioner had been reengaged but he had left the same, on his own. Now, when regard is given to Ex. RA, the mandays chart, it goes to show that in the year, 1998, the petitioner had worked for 89 days, in 1999, 256 days, in 2000, 191 days and 3 days in 2001 (July). The contention of the petitioner is to this effect that he was being called for duties but his attendance was not used to be marked. At this stage, I would like to make it clear that had the petitioner been attending his duties and that his attendance was not being marked, in this regard, he could have made a complaint to the superior officers/officials. Besides, he could have also taken steps to file contempt petition against the respondent for disobeying the order of State Tribunal dated 30.11.2001. It cannot be believed that when he had joined his duties, his attendance was not used to be marked. It is to be noted that without marking his attendance, the department could also not have paid wages to him. Thus, from the record, which is available, on the file, particularly mandays chart Ex. RA, it is abundantly clear that the petitioner had not worked after 2001 in which year, he had only worked, in the month of July for 3 days.

13. Undoubtedly, for the petitioner reliance has been place on ***2006-III-LLJ, Suraj Pal Singh & others Vs. P.O Labour Court No. III & another*** in which it has been held by the Hon'ble Delhi High Court that: ***“Continuous service for not less than one year-Does not mean year immediately preceding date of retrenchment.”***

14. From this case law, the petitioner cannot derive any benefits because he has miserably failed to prove that after his reengagement by the order of the State Tribunal, his services were again disengaged/terminated, **in the month of August, 2006**. I may reiterate that from the mandays chart Ex. RA, it is abundantly clear that in the preceding years from August, 2006, the petitioner had not worked till the year, 2001, in which year, he had worked only for 3 days. The respondent was required to comply with the provisions of section 25F of the Act, only, if the petitioner had succeeded in proving that in the twelve preceding calendar months from the date of his alleged termination, he had completed 240 days. When such is the position then the evidence led by the respondent that the petitioner had left the job, on his own, deserves to be believed and relied upon. Consequently, for my above discussion, I hold that the petitioner has failed to prove that his services were illegally terminated in contravention of the provisions of the Act, my answer to this issue is in “No”.

#### ***Issue No. 2.***

15. In view of my findings on issue no.1 above, this issue becomes redundant.

#### ***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st October, 2010 in the presence of parties counsels.

A.S JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 42 of 2010.  
Instituted on.12.4.2010.  
Decided on. 9.11.2010.

Vijay Pal S/o Shri Rameshwar C/o Shri Aananth Choudhery, Near High School, Village Maranwala, P.O. Nanakpur, Tehsil Kalka, District Panchkula (HR). .Petitioner.

VS.

The Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP. .Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.  
For respondent: Shri Rupesh Sharma, Advocate.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

***“Whether the termination of the services of Shri Vijay Pal S/o Shri Rameshwar by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP w.e.f. 1.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to”?***

2. At the very out set, I would like to point out that despite many efforts, having been made by this Court, the petitioner (Vijay Pal S/o Shri Rameshwar) could not be served. In these circumstances, this Court decided to answer the reference, on the basis of material, whatsoever, is available, on the record.

As, no statement of claim has come on record, on behalf of the petitioner, the respondent also did not file any rely, pursuance to the reference, which has been made by the appropriate government.

It is highlighted that the services of Shri Vijay Pal (petitioner) were terminated w.e.f. 1.1.2009 by the Managing Director, M/s Vaidya Nutraceuticals (P) Ltd., Village Balyana, Industrial Area Barotiwala, District Solan, HP, without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services were terminated against the provisions of the Act, a prayer has been made for his reinstatement alongwith seniority and continuity, in service, as well as back wages.

For the failure of the petitioner to have been served, despite several efforts made by this Court, no statement of claim has come, on record. Thus, there is no material, whatsoever, which may go to show substantiate the contention of the petitioner that his services had been terminated in contravention of the provision of the Act. Thus, this reference deserves to be answered against the petitioner. **I may make it clear that in case, the petitioner puts his presence before this Court, he may have right to get appropriate steps in order to get this reference decided on merits.** With these observations, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th November, 2010.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 46 of 2010.  
Instituted on 12.4.2010.  
Decided on 1.10.2010.

Rajinder Kumar s/o Shri Om Parkash VPO Kheranwali, Tehsil Kalka, District Panchkula, Haryana. .Petitioner.

Vs.



The Managing Director M/s Saini Hair Products Pvt. Ltd. Plot no. 94, HPSIDC, Baddi, District Solan, HP .  
Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Sunil Chauhan, Advocate.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

***“Whether the termination of services of Shri Rajinder Kumar s/o Shri Om Parkash VPO Kheranwali, Tehsil kalka, District Panchkula, Haryana by The Managing Director M/s Saini Hair Products Pvt. Ltd. Plot no. 94, HPSIDC, Baddi, District Solan, HP on 22.9.2007, without complying with the provisions of the Industrial disputes Act, 1947 is legal and justified? If not, to what relief and consequential service benefits Shri Rajinder Kumar is entitled to?” “Whether demand of payment of bonus and leave encashment by the workman is legal and justified? If yes, what relief and amount of compensation, the above worker is entitled to?”***

2. It is to be mentioned that on the fixed date i.e 1.10.2010, neither the petitioner appeared in person nor through counsel despite the fact that on the previous date of hearing i.e 3.9.2010, he was present. Even, on behalf of respondent none appeared despite service having been effected, in accordance with law. Faced with such a situation, this Court was left with no other alternative, particularly, when for today i.e 1.10.2010, the absence of the petitioner is no justified, but to dispose of the reference on the basis of material, whatsoever, is available on the record.

3. It is highlighted that the services of the petitioner were terminated on 22.9.2007 by the respondent (The Managing Director M/s Saini Hair Products Pvt. Ltd. Plot no. 94, HPSIDC, Baddi, district Solan, HP) without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). The contention of the petitioner is further to this effect that his demand for payment of bonus and leave encashment is also legal and justified. Since, it is alleged that his services had been terminated in contravention of the provisions of the Act, a prayer has been made for his reinstatement alongwith all the benefits and further to pay him compensation.

4. For the failure of the petitioner to have filed statement of claim and also that there is no evidence, whatsoever, on record, which could go to show that his services had been terminated w.e.f. 22.9.2007 in an illegal and unjustified manner and further that his demand for payment of bonus and leave encashment was legal, the reference is required to be answered against him and accordingly the same is answered against him. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records. Announced in the open court today this day of 1st October 2010.

A.S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
SHIMLA

Ref no. 47 of 2007  
Instituted on.20.6.2007.  
Decided on. 5.10.2010.

Dipesh Singha C/o Shri Balbir Singha, Singha Niwas, Khalini, Shimla-2, HP.

. .Petitioner.

VS.

The Chairman-cum-Managing Director M/s Shoghi Communication Ltd., Plot No 74, Industrial Area Shoghi,  
District Shimla, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri S.D Sharma, Advocate.  
 For respondent: Shri Rohit Sharma, Advocate.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

***“Whether the action of management M/s Shoghi Communication Ltd., Plot No 74, Industrial Area Shoghi, District Shimla, HP not to pay the salary of Shri Dipesh Singha, Network Security Analyst after giving resignation for the period of 2.8.2004 to 18.10.2004 without compliance the provisions of section 33 ( c ) 2 of the Industrial disputes Act, 1947 is proper and justified? If not, what relief back wages, Shri Dipesh Singha from the above employer is entitled to”?***

2. In nutshell the case of the petitioner is that vide appointment letter dated 2.8.2004, he had been appointed as Network Security Analyst with the respondent company on net monthly take home salary of Rs. 6318/-. His job mainly comprised of working on a computer manually. He had neither been employed in managerial or administrative capacity nor did he perform such functions. It is alleged that due to his personal circumstances, he submitted his resignation to the respondent, on 18.10.2004. During the period, for which he had worked with the respondent i.e from 2.8.2004 to 18.10.2004, he was not paid even a single penny. Even, the payment of two cheques bearing no. 195092 dated 6.9.2004, amounting to Rs. 5,707/- and cheque no. 195601, dated 7.10.2004, amounting to Rs. 3,580/-, being his salary for the months of August, 2004 and September, 2004 respectively, was got stopped by the respondent. Against this backdrop, a prayer has been made for getting directed the respondent to pay him his salary as detailed below: Rs. 6318/- for the month of August, 2004. Rs. 6318/- for the month of September, 2004. Rs. 3780/- for the month of October, 2004. Total Rs. 16,416/- alongwith interest.

3. The petition has been contested on having raised preliminary objections including maintainability. On merits, it has been asserted that the petitioner had been appointed to the post of Executive Manager Network Security Analyst and that he was performing managerial and administrative duties/functions. It has been specifically denied that his job, mainly comprised of working on a computer, manually. Even, from his resignation, it is abundantly clear that he was working as Executive Manager Network Security Analyst and for this reason was performing managerial functions. Although, he had submitted his resignation but did not disclose the personal reasons for which the resignation was submitted. It is further pleaded that on having been appointed to the job, aforesaid, he had expressed his desire to undergo a training called Lead Auditor Course which was to enhance his capabilities and also to help him in performing his job in more systematic and organized manner. He had also requested the respondent to bear his expenses for the training and lodging etc. Upon his such a request, and in order to maximize his potential, the respondent funded the entire training and lodging expenses of the petitioner which he did through BSI Management System at Radison Hotel, New Delhi w.e.f. 16.9.2004 to 20.9.2004. The total expenditure incurred on training was Rs. 20,000/-, while Rs. 10,000/- were incurred on his lodging and boarding. It is further maintained that during his entire tenure of about 2 ½ months, he had remained absent for more than 23 days. Although, he had been repeatedly requested to mend his callous attitude and to be punctual but of no avail. Even, he had remained absent without intimation w.e.f. 7.10.2004 till 12.10.2004. On 13.10.2004, when he joined the duties, he again left by keeping/leaving his resignation, on table, on 14.10.2004. In this way, he had put the company to incur the expenses of his training and then leaving the services, abruptly, without intimating the concerned officials. He, even, did not choose to download his activities to the concerned official despite having been requested telephonically as well as through E-mail. Thus, he also put the respondent to losses as much as the operations which were under way had to be got redone through other employees, by incurring considerable expenses, in more than two months. He also omitted to handover the company's documents, with the result, a lot of confusion was created in the office. It is further asserted that before going to training, the petitioner had committed to the respondent that he would serve the company for a minimum period of one year and that on his such assurance, the respondent had agreed to incur the expenses of his training etc. However, instead of fulfilling his assurance, he immediately joined another company and thereby prejudiced the interests of the respondent. In these circumstances, it is the respondent company which is entitled to claim the amount spent on his training, lodging and boarding etc. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 11.8.2008.

1. Whether the action of management of M/s Shoghi Communication Ltd., Plot No 74, Industrial Area Shoghi, District Shimla not to pay the salary for the period from 2.8.2004 to 18.10.2004 to Shri Dipesh Singha after tendering his resignation without compliance the provisions of section 33-C 2 of the Industrial Disputes Act, 1947, is improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved, to what relief and back wages, Shri Dipesh Singh is entitled to from the employer as alleged? ..OPP.

3. Whether the claim is not maintainable in the present form? . .OPR.
4. Whether the petitioner does not fall within the purview of definition of workman as defined under the Act and thus is not entitled to any relief? . .OPR.
5. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.
 

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Issue no.4.	No.
Relief.	Reference answered against the petitioner, per operative part of award.

### *Reasons for findings*

#### *Issue No.1*

8. It has been argued on behalf of the petitioner that the action of the respondent company, to withheld the salary of the petitioner from 2.8.2004 to 18.10.2004, is totally illegal and unjust and that, it requires to be directed to pay all the dues to the petitioner alongwith interest.

9. On the other hand, it has been urged on behalf of the respondent that during his service tenure of 2 ½ months, the petitioner had remained absent for more than 23 days and that despite repeated request to mend his callous attitude and to remain punctual, he did not show any improvement. Moreover, at the expenses of the respondent company, the petitioner had been got imparted training of Lead Auditor Course, on which the company had to incur expenses to the tune of more than Rs. 30,000/-. On having taken the training, the petitioner instead of serving the respondent company, in more professional manner and to his maximum potential, submitted his resignation and joined another company. When, the petitioner had indulged in mistrust, and also that for getting imparted training to him, the company had to incur much more expenses than his due salary, the petitioner is not entitled to the salary as claimed, particularly, when he had also remained absent for 23 days out of his total service tenure which was about 2 ½ months.

10. Admittedly, the petitioner had joined the respondent company on 2.8.2004, as is also evident from Ex. PA. It is also not a disputed fact that during the period, the petitioner had remained in the employment of the respondent company, he was not paid any salary.

11. While appearing in the witness box, the petitioner (PW-1) has supported all the material particulars, including that he had continued to remain in the service of the respondent company w.e.f. 2.8.2004 till 18.10.2004 and that no wages were paid to him. Even, two cheques of his salary for the months of August & September, when presented for encashment, were dishonored as the payment was stopped by the company. He had served a notice dated 11.10.2004 upon the Chairman of the respondent company, which is Ex. PB. He admitted his resignation letter, Ex. RB and that he had been provided special training of Lead Auditor Course by the company, on his request. He expressed his ignorance that the company defrayed his expenses for that course/training, which commenced in the month of 1st and 2nd week of September, 2004. He denied of having availed 23 days of unauthorized leave during his probation period and not to have downloaded his activities to his seniors.

12. Shri Pradeep Sachdeva (RW-1), has been authorized to make statement vide letter Ex. RA. He has supported this fact that on the oral request of the petitioner, he had been imparted training of Lead Auditor Course for enhancing his capabilities and performance, at the expenses of the company amounting to Rs. 20,000/- (on training) & Rs. 10,000/- (lodging and boarding). The expenses bill of the petitioner and other employee is Ex. RB (it is clarified that resignation letter has also been exhibited as RB). During his service tenure i.e w.e.f. 2.8.2004 till 14.10.2004, the petitioner had availed 23 ½ days of leave, without any approval. For his casual and non serious approach towards his duties, he had been warned several times vide Ex. RD to Ex. RI. The petitioner had been apprised about his resignation from service subject to the terms and conditions vide Ex. RC. The petitioner had also not handed over assignments to the company as desired. In the cross examination, he stated that no bond had been executed by the petitioner before proceeding to undertake training, In the appointment letter, there is no such mention that the expenses of the specialized network audit training were to be deducted from his dues.

13. From the statement of Shri Pradeep Sachdeva (RW-1), it is duly proved that the respondent company had incurred expenses to the tune of Rs. 30,000/- for getting imparted training to the petitioner and that his such version also gets support from the documents, on record, including Ex. RB (expenses bill). Even, the petitioner (PW-1), admits this fact that at the expenses of the respondent company, he had been got imparted special training of Lead Auditor Course, on his request. At this stage, I would like to point out that in the statement of the petitioner (PW-1), it has nowhere come that on the training, the expenditure had been paid by him, from his own pocket. Even, he has not disputed this fact that on his training, the respondent company had not incurred expenses to the tune of Rs. 30,000/-, i.e. Rs. 20,000/- on his training and Rs. 10,000/- on his boarding and lodging. In the statement of Shri Pradeep Sachdeva (RW-1), it has come that the petitioner had availed 23 ½ days of leave without any approval. He has also stated that the petitioner had been warned several times for his unauthorized leave and not being serious in the performance of his duties. On this score, his version gets support from Ex. RD/RG, Ex. RE/RH and Ex. RF/RI.

14. Ex. RB, is the resignation of the petitioner dated 14.10.2004. The cause for resigning, as per this resignation letter, was personal reasons and career prospects. Ex. RC, is the letter of the acceptance of the resignation. The perusal of this letter goes to show that the resignation of the petitioner, as tendered vide letter dated 14.10.2004, had been accepted from 18th October, 2004, as per terms and conditions mentioned therein. It is worthwhile to reproduce the terms and conditions as mentioned in Ex. RC and that the same are as under:

***“1). Your resignation from the services all of a sudden is a totally unprofessional act as you have not brought any of your job responsibilities and assignments to a logical end.”***

***2). It may also be noted that the company has invested lot of time, efforts and money on to you to make you a productive professional. Your resignation from the company had nominated you for a specialized Network Audit Training for which a sum of Rs. 20,000/- was spent. This amount shall be adjusted from your full and final settlement. Your resignation from the service thus stands accepted from 18th October, 2004 under above terms and conditions.”***

15. From the term/condition no.2, aforesaid, the petitioner had been made to know that for getting imparted Special Network Audit Training to him, a sum of Rs. 20,000/-, had been spent by the company, which was required to be adjusted towards full & final settlement. The amount which has been claimed by the petitioner towards his salary for the month of August to October, 2004, is to the tune of Rs. 16,416/-. This goes to show that the salary which was due in his favour was less than the expenses, which had been incurred by the respondent company for getting imparted training, as aforesaid, to him.

16. I may also like to observe that the conduct of the petitioner, in submitting his resignation, on having taken training at the expenses of the respondent company was not aboveboard. In fact, his such conduct was prejudicial to the interests of the respondent company, which had incurred the expenses for getting provided training to him, during his service tenure with the hope that the same was to enhance his professional skills. The petitioner cannot take any benefit for the reason that no bond was got executed by the respondent company before sending him for training. Since, the training had been got imparted to the petitioner, at his own request, it was required of him to have served the respondent company, with enhanced potential and skills than to have tendered his resignation. Thus, I disagree with the Ld. counsel that the petitioner is entitled to be paid salary for the aforesaid period and that the action of the respondent in withholding his such salary is improper and unjustified. Accordingly, my answer to this issue is in “No”.

#### **Issue No.2.**

17. In view of my findings on issue no.1 above, this issue becomes redundant.

#### **ISSUE NO. 3**

18. It is not understandable as to why the claim, in the present form, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner.

Apart from it, the learned counsel for the respondent could not explain as to why this claim/petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in “No”.

#### **ISSUE NO. 4**

19. An objection has been taken by the respondent that the petitioner does not fall within the purview of the worker as defined under the Act because he was performing supervisory functions. As per the petitioner, he had been appointed as Network Security Analyst. His such version gets support from appointment letter Ex. PA. Although, in the statement of Pradeep Sachdeva (RW-1), it has come that the nature of the work of the petitioner was to analyze

the work of his juniors and parallel staff but his such version does not go to prove that, in fact, he was performing his duties in supervisory capacity. It has been held by the Hon'ble Supreme Court *in (2006) 6 Supreme Court Cases 548, ANAND REGIONAL COOP. 'OIL SEEDSGROWERS' UNION LTD VERSUS SHAILESH KUMAR HARSHADBHAI SHAH* that:

**“In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to his class should not be given undue importance- Preliminary duties performed by him are more important. Existence of subordinates whose work is required to be supervised is a sine qua non to prove supervisory work. An employee in charge of a section and that too a small one in the quality control department of an oil seedgrowers' cooperative society, without any authority to initiate departmental proceedings against the subordinates, held, did not fall within the scope of section 2(s).**

20. Keeping in view the evidence, on record, and the law laid down by the Hon'ble Apex Court (supra), I have no hesitation in holding that the respondent has failed to prove that the petitioner was not a workman as per section 2(s) of the Act. Accordingly, my answer to this issues is in “No”.

#### RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against him and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 5th October, 2010 in the presence of parties counsels.

A. S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, SHIMLA CAMP AT SOLAN

Ref no. 78 of 2005.  
Instituted on.9.9.2005.  
Decided on. 25.10.2010.

1. Bidhi Singh S/o Shri Matlabi Ram R/o Mahr, P.O Lagru Via Jawalamukhi, Tehsil Khundian, District Kangra, HP.
  2. Hem Raj S/o Shri Gain Chand R/o VPO Seorpain, Tehsil Dehra, District Kangra, HP.
- . . . Petitioner.

VS.

1. Himachal Pradesh Financial Corporation, New Himrus Building, Shimla, HP, through its Managing Director.
  2. The Branch Manager, HP Financial Corporation, Jharmajri, Baddi, P.O Barotiwala, Tehsil Solan, HP.
- . . . Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri J.C Bhardwaj, Ld. AR.  
For respondent: Shri B.S Kapoor, Advocate.

#### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

**“Whether the retrenchment of Shri Bidhi Singh S/o Shri Matlabi Ram and Shri Hem Raj S/o Shri Gain Chand, daily wages chowkidar vide retrenchment notice dated 16.2.2004 (copy enclosed) by**

**the Branch Manager, HP Financial Corporation, Jharmajri, Baddi, District Solan, HP after complying with section 25F of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits the above aggrieved workmen are entitled to?"**

2. At the very outset, it may be stated that a joint statement of claim has been filed by Bidhi Singh (hereinafter referred as petitioner no.1) and Hem Ram (hereinafter referred as petitioner No. 2).

3. Facts in brief are narrated as under:

Whereas, petitioner no.1, was initially appointed, as chowkidar, on 1.2.1991, petitioner No.2, on 24.7.1990, by the respondents. However, their services were illegally terminated on 14.7.1992 and 27.8.1992, respectively. Thereupon they, raised industrial disputes which were referred to this Court on 18.2.1993, for adjudication. Vide order dated 28.5.1998, their disputes/matters were decided by this Court, on merits, and both were ordered to be reinstated. Consequent thereupon, they submitted their joining reports to the respondents on 25.6.1998 but were not allowed to resume their duties despite the fact that the CWPs, filed by the respondents, in the Hon'ble High Court, were dismissed/rejected, on 4.8.1999 (should have been 1.12.2002). Thereafter, they were allowed to resume duties on 1.1.2002, when the labour authorities were applied for granting sanction to prosecute the respondents for violating the court orders, deliberately. In this way, the awards, passed by this Court, were upheld and maintained for all purposes including continuous service under section 25B of the Industrial Disputes Act, 1947 (hereinafter referred as Act), by the Hon'ble High Court. It is averred that by ignoring the period of their seniority w.e.f. 28.5.1998 to 21.1.2002, the respondents, again retrenched their services vide order dated 16.2.2004, by paying them wages for one month, as per section 25F of the Act but without paying sufficient compensation. Upon this, they again preferred a writ petition before the Hon'ble High Court (CWP No. 216/2004), which was decided by directing the petitioners to approach the authorities under the Act, for quashing and setting aside notices of retrenchment dated 16.2.2004. It is further maintained that their services continued to remain from the initial dates of their engagements, as aforesaid. Since, the respondents had issued the notices of their retrenchment by not properly appreciating the awards of this Court dated 28.5.1998, as per which, they (petitioners) had been ordered to be reinstated with retrospective effect and further, many juniors to them were retained, for this reason, their retrenchment notices dated 16.2.2004, are not sustainable either on facts or law, for being in violation of the provisions of the Act, including section 25G. Further, the respondents have sufficient work, where the petitioners could have been adjusted, as per seniority. Against this backdrop, a prayer has been made for quashing/setting aside order dated 16.2.2004 and directing the respondents to reinstate them with retrospective effect from the date of their illegal termination/retrenchment i.e 16.2.2004 alongwith all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability and that the petitioners are not the employees of the respondents. On merits, it has been asserted that initially, the services of petitioner no.1 had been engaged as daily wage chowkidar for watch and ward for taken over units of M/s Chenab Rubber (P) Ltd. Baddi under section 29 of the SFCs Act, 1951 (hereinafter referred as SFC Act), purely on contractual basis, on 1.2.1991, till the assets of said company were not disposed/transferred. In this way, his services had been engaged only for limited purpose and it was co-terminus with the sale of the assets of the company which were sold on 4.5.1992 and the possession thereof was delivered to the purchaser, on 14.7.1992. Thereafter, his services were not required by the respondents. Similarly, the services of petitioner no.2 had also been engaged, purely, on contract basis, for watch and ward for the taken over assets of M/s BVR Food Products (P) Ltd., Baddi, during the period from 14.7.1990 to 18.7.1992. Further, there is no provision, in the staff regulation, of the respondent corporation, to engage chowkidar like petitioners for the taken over units and no rules and regulations have been framed for such contractual engagements. Thus, such chowkidars cannot be considered as the employees of the respondent corporation. Moreover, the salary for the period of their engagement had been debited to the loan account of the taken over units, where they had been engaged as daily wage workmen. In these circumstances, the petitioner cannot claim continuous of their services with the respondents. It is further asserted that on having received notice dated 2.11.2001, from the Labour-cum-Conciliation Officer, the respondents implemented the awards and the petitioners were reengaged as daily wage chowkidar, afresh, in taken over units on 1.1.2002 and after the sale of taken over assets of M/s Vikarm Cement (P) Ltd, their services were no longer required. Consequently, in pursuance of award dated 28.5.1998, passed by this Court and judgment dated 1.12.2003, passed by Hon'ble High Court in CWP Nos. 739 & 741 of 1998, the respondents corporation dispensed with the services of the petitioner after complying with the provisions of section 25F of the Act as there had been no vacancy of chowkidar, where the petitioners could have been deployed/engaged, for the purpose of watch & ward of assets of any taken over units. In this way, the respondents terminated the services of the petitioners without violating the provisions of the Act. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioners have reiterated their own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.12.2008.

1. Whether the retrenchment of Shri Bidhi Singh and Hem Raj, daily wages chowkidars vide retrenchment notice dated 16.2.2004 by the Branch Manager, Financial Corporation Jharmajri, Baddi, HP after complying with section 25F of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . OPP.
2. If issue no.1 is proved to what relied of service benefits, the petitioners are entitled to? . . OPP.
3. Relief.

6. I have heard the learned AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages from the date of their termination *i.e w.e.f.* 16.2.2004.

Relief. Reference answered in favour of the petitioners, per operative part of award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Ld. AR appearing on behalf of the petitioner urged with vehemence that consequent upon the award, passed by this Court dated 28.5.1998, in reference nos. 42 & 43 of 1993, Ex. PA and Ex. PW-2/A, which were upheld by Hon'ble High Court in CWP Nos. 739 & 741 of 1998, as per judgment dated 1.12.2003, the petitioners continued to remain in service from the date of their initial engagements. Ld. AR further urged that when the petitioners were allowed to resume their duties on 1.1.2002, consequent upon the proceedings having been initiated by them for their reinstatement, again, their services were dispensed with vide orders dated 16.2.2004, in contravention of the provisions of the Act because they were not paid the retrenchment compensation for which they were entitled to and further that juniors to them were retained by the respondents. Since, the services of the petitioners were terminated in utter violation of the provisions of the Act, they deserve to be reinstated alongwith all the consequential benefits including back wages, Ld. AR submitted.

9. On the contrary, it has been submitted on behalf of the respondents that the services of the petitioner had been engaged as chowkidars, on daily wages, for watch & ward of the assets of taken over units, from time to time under the SFCs Act and that when those assets were to be sold, their services were co-terminus with the same. Ld. Counsel further urged that the respondents have not got any regular vacancies of care takers or chowkidars to be engaged in taken over units. Thus, the services of the petitioners were legally terminated/retrenched, on having fulfilled the conditions as enshrined in the Act.

10. While appearing in the witness box as PW-1, petitioner no.1 has corroborated all the material particulars including that his services were again terminated on 5.2.2004, as per termination order Ex. P/E by paying compensation for only two years whereas he had continued to remain in service for eleven years. Thus, the compensation, as per the provisions of section 25F was not paid to him and his services were illegally terminated. Even, the respondents engaged the services of his juniors namely Prem Chand and Chandu Lal etc. after his retrenchment. In the cross examination, he expressed his ignorance that when an unit is taken over by the respondent corporation, a temporary chowkidar is kept till the unit is closed and that there are no permanent posts of chowkidars with the respondents. He denied that said Prem Chand etc. had already been engaged as chowkidar in different units, taken over by the respondent corporation.

11. Petitioner no.2, when appeared in the witness box as PW-2, also supported all the material particulars including that his services were again terminated on 16.2.2004 vide Ex. PW-2/D by paying compensation for only two years, whereas, he had continued to remain in service for eleven years. He further stated of not having been paid the compensation as per section 25F of the Act and that juniors to him namely Prem Chand etc. have been engaged after his termination. While being cross examined, he deposed in the identical terms as stated by PW-1.

12. Shri Saravjeet Singh (RW-1) has appeared in the witness box to support the defence version on all material particulars including that on having received a notice from the Labour-cumConciliation Officer, both the petitioners were reengaged on 1.1.2002 and that when the taken over unit was sold, their services stood discontinued on 5.2.2004 He further made it clear that the salaries of the petitioners were debited to the accounts of the taken over units.

In the cross examination, he stated that in the year, 2004, there might be 30 to 35 daily wagers with the respondent corporation and that the seniority list has not been prepared. He further explained that the seniority list is not prepared as the respondent corporation can engage the services of daily wagers as per the need of the work. He expressed his lack of knowledge that as per letter dated 16.2.2004, the petitioners had been paid partial compensation but explained that the compensation has been paid to them as assessed by the corporation.

13. Ex. PE, is the notice which had been issued to petitioner no.1 under section 25F of the Act, whereby his services were retrenched w.e.f. 5.2.2004 and he was also sent a demand draft no. 0152544 drawn on the Kangra Central Co-oprative Bank Ltd., Government College, Una, in the sum of Rs. 6630/- by way of compensation and wages in lieu of one month's notice, as per detail mentioned in the notice. Similarly, petitioner no.2 had been sent bank draft no. 0152545 for Rs. 6630/- through notice Ex. PW-2/D, whereby his services also stood retrenched w.e.f. 5.2.2004, as detailed therein. The perusal of the aforesaid notices goes to show that the petitioners had been paid compensation for the period from 1.2.1991 to 14.7.1992 and 1.1.2002 till the date of notice i.e. 16.2.2004. At this stage, I would like to observe that as per orders dated 28.5.1998, passed by this Court, as aforesaid, and which were upheld by the Hon'ble High Court, the petitioners were ordered to be reengaged. Further, by filing execution, pursuant to the orders, passed by this Court and confirmed by the Hon'ble High Court, the petitioners were reinstated by the respondents on 1.1.2002 and thereafter their services were finally terminated w.e.f. 16.2.2004. This clearly goes to show that they continued to remain in service from the dates of their initial engagements till, their services were finally terminated on 16.2.2004. It is true that the respondents, while dispensing with the services of the petitioners, had issued notices to them, stating therein the reasons for their termination alongwith the compensation, as calculated and also wages in lieu of one month's notice, but it has been rightly contended by the petitioners that they had not been paid retrenchment compensation, as per the provisions of section 25F of the Act. At this stage, it is pertinent to refer to section 25F of the Act.

**25F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

14. As per clause (b) of the aforesaid section, the retrenchment compensation was required to be calculated equivalent to fifteen days average pay for every completed year for continuous service or any part thereof in excess of six months. In the instant case, the retrenchment compensation was required to be calculated from the initial engagements of the petitioners till their services were ultimately dispensed with i.e. w.e.f. 16.2.2004 because they had continued to remain in services, on the basis of the awards, passed by this Court, as aforesaid. From Ex. P/E and Ex. PW-2/D, it is abundantly clear that the petitioners had not been paid compensation as per clause (b) of section 25F of the Act. It is further to be noted that the respondents had also not served notices on the appropriate government as required by clause (c) of section 25F. In this way, it stands proved, on record, that the services of the petitioners w.e.f. 16.2.2004, had been terminated in contravention of the provisions of the Act.

15. Further, evidence has been led by the petitioners in order to show that their juniors namely Prem Chand etc., as aforesaid, have been retained in service by the respondents. In the statement of Shri Saravjeet Singh (RW-1), it has come that there might be 30 to 35 daily wagers with the respondent corporation. Since, the respondents have not led any convincing evidence to show that the aforesaid are not junior to the petitioners, the disengagement of the services of the petitioners w.e.f. 16.2.2004, is also held to be in contravention of the provisions of section 25 G & H of the Act. Accordingly, retrenchment notices Ex. PE and Ex. PW-2/D dated 16.2.2004, are set aside and quashed. Consequently, for my discussion above, my answer to this issue is in "Yes".

#### ISSUE NO. 2

16. It has not been alleged by the petitioners that they are unemployed and not gainfully employed. It has been held by the Hon'ble Supreme court in 2010 (1) SLJ SC 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further



**held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry”.**

17. When, the facts of the instant case are considered in the light of judgment (supra), I am of the view that the petitioners are not entitled to be granted back wages, for the period during which, they did not do any work for the respondents. I may also like to mention that in the instant case, the services of the petitioners had stood terminated consequent upon the service of notices Ex. P/E and Ex. PW-2/D.

18. Since, their services were terminated in contravention of the provisions of the Act, I am of the view that they are entitled to be reinstated in service with seniority and continuity but without back wages. Accordingly, my answer to this issue is in “Yes”.

#### RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is allowed and it is ordered that they (petitioners) be reinstated in service, with seniority and continuity but without back wages, from the date of their termination i.e 16.2.2004, by quashing and setting aside their termination notices dated 16.2.2004, with the result, the reference stands answered in favour of the petitioners and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th October, 2010 in the presence of parties counsels.

A. S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla Camp at Solan.

IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, SHIMLA

Ref no. 89 of 2006.  
Instituted on 13.7.2006.  
Decided on. 1.10.2010.

Darshan Lal S/o Shri Geeta Ram R/o Village Nalka, P.O Mattar, Tehsil, Nahan, District Sirmour, HP.

. . Petitioner.

VS.

1. The Deputy Director, HP, State Financial Corporation, New Himrus building, Shimla-1.
2. The General Manager, HP State Financial Corporation, Nahan, District Sirmour, HP . . Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Balram Sharma, Advocate.

For respondent: Shri J.L Kashyap, Advocate.

#### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

***“Whether the termination of Shri Darshan Lal S/o Shri Geeta Ram workman by the (1) Deputy Director, HP, State Financial Corporation, New Himrus building, Shimla-1 (2) the General Manager, HP State Financial Corporation, Nahan, District Sirmour, HP w.e.f. 17.5.2004 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to”?***

2. Briefly, the case of the petitioner is that he had been appointed as Chowkidar by the respondent/competent authority, in its office at Nahan., on 6.9.1991, on daily wage and remained as such till 17.5.2004, when his services were illegally terminated. In fact, he had been appointed as Chowkidar, as per agreement and that during the period, he remained in service of the respondent, he performed his duties honestly and diligently. Since,

before his termination, no notice or compensation was paid to him, the same was in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred as Act). For this reason, he deserves to be reinstated, in service, with all the consequential service benefits including back wages.

3. The petition has been contested on having raised various preliminary objections, including maintainability and that the respondent was not the employer of the petitioner. On merits, it has been asserted that the petitioner had been engaged by the respondent for the various taken over industrial units, under section 29 of the State Financial Corporation Act, 1951 (hereinafter referred as SFCs Act), from time to time, w.e.f. 6.9.1991 to 17.5.2004, for watch and ward duties. It has been specifically denied that he had been appointed as daily wage chowkidar in the office of the respondent, at Nahan on 6.9.1991. Initially, his engagement was on contract basis in the taken over unit viz. M/s Him Extraction (P) Ltd., Surajpur, Paonta Sahib, District Sirmour, HP from 6.9.1991 to 4.4.1995 in order to watch & ward the assets of he above taken over unit. However, the above said unit was sold and its possession was handed over to its purchaser. Thereafter, on the request of the petitioner, vide letter dated 4.4.1995, he was again engaged, in another taken over unit viz. M/s Tex Tool Indus. and M/s Himachal Wheel, Paonta Sahib, to watch & ward the taken over assets, from 5.4.1995. Later on, on 7.6.1995, he had also executed an agreement for temporary appointed as Chowkidar, on daily wage, for watch & ward of the said taken over assets. When, the assets of the aforesaid taken over industrial units were sold and possession handed over to their purchaser, then the services of the petitioner were no longer required and as such, his services were dispensed with in accordance with agreement dated 7.6.1995, vide letter dated 17.5.2004. Thus, his services had been validly dispensed with. It is further pleaded that the petitioner cannot take the benefit to have remained in continuous service for 240 days, as his engagement was on contract basis, as daily wage chowkidar. It is further maintained that the respondent had not been the employer of the petitioner because he was being paid salary for the period, for which he remained engaged as chowkidar to watch & ward the assets of the taken over units, from the loan accounts of the concerned industrial concerns, in which, the salary paid to him, was being debited. Thus, he used to be treated, as chowkidar, to watch & ward the assets on behalf of the industrial units in which he was being engaged on contractual basis. As far as respondent is concerned, it used to be considered as owner of the assets of the company/units for limited purpose under section 29 of the SFCs Act. Moreover, the petitioner had also been made known about the conditions of his appointment, as per agreement dated 7.6.1995. Other allegations denied.

4. No rejoinder filed. Pleadings of the parties gave rise to the following issues which were struck on 6.5.2009.

1. Whether the termination of services of Shri Darshan Lal workman by the respondents w.e.f. 17.5.2004, without complying with the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? . . . OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? . . . OPP.
3. Whether the petition is not maintainable in the present form? If so, its effect? . . . OPR.
4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief. Reference answered against the petitioner, per operative part of award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

7. Learned counsel for the petitioner has argued with vehemence that since, before dispensing with the services of the petitioner, no notice or compensation was paid, for this reason, his such retrenchment has been in contravention of the provisions of section 25F of the Act.

8. On the other hand, it has been urged on behalf of the respondents that the petitioner had been made to know, at the time of his initial engagement, that his services were being engaged till the time, the taken over unit/units be not sold. Ld. Counsel further submitted that regarding his such engagement, the petitioner had also executed an agreement with the respondents and that as per its terms and conditions, his services stood terminated w.e.f. 17.5.2004.

9. The statement of the petitioner (PW-1) is to this effect that he had been engaged as chowkidar by the respondents on 6.9.1991 and continued as such till 17.5.2004, when his services were terminated without notice and paying compensation. Preceding his termination, he had been completing 240 days in every calendar year. In the cross examination, he admitted of having been made to understand, at the time of his engagement, that he had been engaged on co-terminus basis with the sale of taken over assets or their release to the previous owner. He had not written/made letter dated 4.4.1995 but the same bears his signatures and that the said letter is Ex. RA. He admitted of having been reengaged from 4.4.1995 and to have executed an agreement with the respondent on 7.6.1995. He further admitted that on 17.5.2004, the unit, in which, he was working, was sold by the respondent and that vide letter Ex. RB, his services were terminated.

10. Shri Sarvjeet Singh (RW-1) has tendered his affidavit Ex. RA-1, in examination-in-chief. According to him, Ex. RA-2, is the appointment letter of the petitioner and that he had executed an agreement Ex. RA-3, with the respondent. Since, he (petitioner) had been engaged on contract basis, as per the need of the work, the compliance of the provisions of section 25F was not required. In the cross examination, he admitted that the petitioner had worked with the respondent, continuously, from 6.5.1991 to 17.5.2004 but explained that he had been engaged for watch & ward of the assets/units, taken over by the respondent under the SFCs Act. He denied that there had been no specific condition in the appointment letter of the petitioner that his services were being engaged for a specific tenure. He admitted that preceding twelve calendar months from the date of his termination, the petitioner had completed 240 days.

11. From the evidence, as referred to above, it is quite clear that the petitioner had continued to remain in service of the respondent w.e.f. 6.9.1991 till 17.5.2004, when his services were disengaged. It is also not a disputed fact that he had completed 240 days in the twelve calendar months from the date of his termination. The only question, which requires to be determined is whether his services had been engaged for a specific period and that the same were co-terminus with the selling of the taken over unit/units, by the respondents, under section 29 of the SFCs Act, or not.

12. Now, when regard is given to the stand taken by the respondents, it is revealed that they do not have any regular vacancy of chowkidars in order to watch & ward the units, taken over by them under section 29 of the SFCs Act. It has further been specifically asserted that initially, the services of the petitioner had been engaged on 6.9.1991 as daily wage chowkidar, on contract basis, in order to watch & ward the assets of M/s Him Extraction (P) Ltd., Surajpur, Paonta Sahib, District Sirmour, HP and that when the said unit was sold and its possession, handed over to the purchaser, on the request of the petitioner vide his letter dated 4.4.1995, he was again engaged in order to watch & ward another taken over unit/units viz. M/s Tex Tool Indus. and M/s Himachal Wheel, Paonta Sahib, w.e.f. 5.4.1995. It has further been specifically pleaded that the petitioner had executed an agreement on 7.6.1995.

13. From the stand, which has been taken by the respondents, it is abundantly clear that the services of the petitioner, as watch & ward of the assets taken over by the respondent corporation, were for a specific period i.e till the taken over assets were sold or the same were released to the previous owner(s). In his affidavit, Ex. RA-1, Shri Sarvjeet Singh (RW-1), has supported the defence version on all material particulars including that the petitioner had been made known that his services were being engaged for a specific period. Even, the petitioner (PW-1), in the cross examination, has admitted that at the time of his engagement, he had been made to understand that his services were being engaged on co-terminus basis with the sale of taken over assets or their release to the previous owner. This clearly goes to show that when the services of the petitioner had been engaged, it was made known to him that his services were being engaged for a specific period. In the statement of Shri Sarvjeet Singh (RW-1), it has come that the services of the petitioner had been engaged vide appointment letter Ex. RA-2. Although, the petitioner has denied to have made any application for his reengagement, as chowkidar, but on letter Ex. RA, he admits his signature. This letter is dated 4.4.1995 and its perusal goes to show that he (petitioner) had applied for his reengagement as chowkidar. From the statement of Shri Sarvjeet Singh (RW-1), it is proved that the petitioner had been given fresh appointment/reengagement vide letter Ex. RA-2 w.e.f. 5.4.1995 and that his such appointment was as per the terms and conditions mentioned therein. Besides, he (petitioner) had also executed an agreement Ex. RA-3, with the respondents. As per its condition no.3, the engagement of the petitioner, as chowkidar, was only on temporary basis and that the same was to remain effective till the taken over units, by the respondent, was sold or that the same was released in favour of the previous owner.

14. From the affidavit, Ex. RA-1, of Shri Sarvjeet Singh (RW-1) it is revealed that taken over units viz. M/s Tex Tool Indus. and M/s Himachal Wheel, Paonta Sahib, were sold, for which, the services of the petitioner had been engaged as chowkidar as watch & ward of the same and that for this reason, his services were dispensed with, in accordance with the agreement dated 7.6.1995, on 17.5.2004, vide letter Ex. RB. Although, the learned counsel for the petitioner has submitted that the respondent was required to comply with the provisions of section 25F of the Act before terminating the services of the petitioner but I disagree with the Ld. Counsel, on this count because the engagement/appointment of the petitioner had been for specific period as per appointment letter Ex. RA-2. Besides, he had also executed an agreement Ex. RA-3 whereby, he had accepted and admitted the terms and conditions of his such

appointment. It has been held by the *Hon'ble Apex Court in AIR 2006 SC 387, Punjab State Electricity Board V. Darbara Singh that:*

*“Retrenchment- Contractual appointment- Engagement of workman was for specific period and conditional- At time of appointment it was clearly indicated that on appointment of a regular employee, his engagement was to come to an end-Order dispensing with services of respondent on appointment of permanent employee- Does not amount to retrenchment- Cannot be set aside for contravention of section 25F”.*

*The Hon'ble Supreme Court in AIR 2005 SC 1790, Dharampur Sugar Mills Ltd., Vs. Bhola Singh, has held in paragraph no. 21 as under:*

*“It is now well settled that even in a case where the services of a workman have been terminated without complying with the provisions of section 6N of the Industrial disputes Act, a direction for reinstatement shall not ordinarily be issued, in the event, the termination of services becomes coterminus with the scheme.”*

15. From the evidence, as referred to above, since it is duly proved that at the time of his appointment, the petitioner had been made to know that his appointment was for a specific period and that the same was co-terminus with the selling of the taken over unit/units or their release to the previous owner/owners, I have no hesitation in holding, particularly in view of the case law (supra), **that his services were not retrenched as per section 2(oo) of the Act but the same are covered as per section 2(oo) (bb) of the Act.** In these circumstances, there was no statutory requirement on the part of the respondent to have served a notice upon the petitioner or in lieu thereof to have paid salary to him besides paying retrenchment compensation as per the provisions of section 25F of the Act. Resultantly, the petitioner fails to prove that his services had been terminated in an improper and unjustified manner and my answer to this issue is in “No”.

#### ISSUE NO. 2

16. In view of my findings on issue no.1 above, this issue becomes redundant.

#### ISSUE NO. 3

17. It is not understandable as to why the petition, in the present form, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this claim/petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in “No”.

#### RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st October, 2010 in the presence of parties counsels.

A. S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 133 of 2007.  
Instituted on.22.10.2007.  
Decided on. 8.11.2010.

Rajinder Kumar S/o Shri Pritam Singh R/o VPO & Tehsil Kumarsain, District Shimla, HP

..Petitioner.

VS.

1. The Secretary, HP State Electrical Board, Vidut Bhawan, Shimla, 171004.
2. The Executive Engineer, HPSEB, Division Kumarsain, District Shimla HP.
3. The Assistant Engineer, HPSEB Electrical Sub Division, Kumarsain, District Shimla, HP.

.. Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Rakesh Dogra, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

#### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

**“Whether the termination of Rajinder Kumar S/o Shri Pritam Singh daily wager workman by the Executive Engineer, HPSEB, Division Kumarsain, District Shimla HP w.e.f. 25.1.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what back wages, seniority, service benefits and relief the concerned workman is entitled to?”**

2. In nutshell the case of the petitioner is that he had been engaged on daily wage basis by the respondent in the month of September, 1985 and remained posted as such in the electrical division Kumarsain, District Shimla, HP till December, 1989. Thereafter, he suddenly fell ill and could not join his duties. After recovery, he tried to join his duties but the respondent did not allow him to do so. In the month of April, 1996, he was reengaged as daily wager by the respondent and continued as such till Feb., 1999, when his services were verbally terminated, without any reason, in contravention of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) because neither he was issued any notice nor paid compensation. Further, the respondents have retained the services of his juniors. It has been specifically averred that the services of Mohan Lal, Jagdayal and many other juniors have been reengaged. Against the arbitrary action of the respondent, he had filed an OA no. 2642/2000 in the State Administrative Tribunal, which became infructuous for want of jurisdiction. Since, his services had been terminated/disengaged in contravention of the provisions of the Act, he deserves to be reengaged alongwith all the consequential benefits alongwith back wages.

3. The petition has been contested by admitting that the petitioner had joined as daily rated beldar w.e.f. 25.9.1985 and continued to remain as such till 24.11.1989, and not as alleged by the petitioner, as per the exigency of work. Again, he was enrolled as beldar w.e.f. 1.4.1994 in order to do seasonal work and continued to remain as such till 24.1.1999, when his services stood automatically terminated/disengaged on the completion of the work and non availability of funds with the respondents. It has further been averred that he did not complete 240 days. As far as OA no. 2642/2000 is concerned, the same was dismissed on 18.7.2006. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 19.12.2009.

1. Whether the termination of the petitioner by the respondent w.e.f. 25.1.1999 without complying the provisions of the industrial disputes Act, 1947 is illegal and unjustified as alleged? ..OPP.
2. If issue no.1 is proved, to what back wages, seniority, service benefits and relief the petitioner is entitled to? ..OPP.
3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 Accordingly in Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

#### REASONS FOR FINDINGS

##### ISSUE NO .1

8. While appearing in the witness box as PW-1, the petitioner has tendered his affidavit Ex. PA, in which, he has supported all the material facts on oath. According to him, Ex. PW-1/A is the list of working days of Shri Jagdayal, who is junior to him and similarly, Ex. PW-1/B that of Mohan Lal, another junior. Ex. PW-1/C is the order

passed by the State Tribunal. In the cross examination, he admitted of not having completed 240 days in any year and that S/Shri Mohan Lal & others were working when he was also in job. Further made it clear that Jagdayal is junior to him.

9. Shri Ravinder Singh (RW-1) says that the petitioner did not complete 240 days and that his juniors, were reengaged on the orders of the Court, including Jagdayal Singh. He further made it clear that the petitioner had left the job, on his own and thereafter did not turn up. In the cross examination, he expressed his lack of knowledge that the petitioner was being given artificial breaks and that if such breaks had not been given he would have completed 240 days.

10. From the evidence, which has been referred to above, it is abundantly clear that in the twelve preceding calendar months, the petitioner had not completed 240 days from the date of his termination/retrenchment i.e 25.1.1999. The respondents were required to have complied with the provisions of section 25F of the Act if the petitioner had completed 240 days in the twelve preceding months. Thus, on this score, his termination cannot be said to be illegal and improper.

11. Another contention on which the petitioner has challenged his termination/retrenchment to be illegal and improper is that his juniors are still in service. While appearing in the witness box, (PW-1), he has named his juniors, who are still in service, including one Shri Jagdayal Singh. Ex. PW-1/A is the mandays chart/working days of said Jagdayal Singh (beldar) which goes to show that initially he was engaged on 25.9.1992. As far as petitioner is concerned, he had been initially engaged on 25.9.1985 as is also admitted by the respondents. Thus, it is proved, on record, that Shri Jagdayal Singh is junior to him. It is true that the respondents have taken the plea that said Jagdayal Singh was engaged/reengaged on the orders of the Court but there is no such material, whatsoever, on record. Thus, the petitioner has succeeded in proving that the respondents disengaged his services in contravention of provisions of section 25G & H of the Act. Accordingly, I hold that the services of the petitioner were illegally terminated by the respondent without complying with the provisions of the Act, particularly section 25G & H. Accordingly, my answer to this issued is in "Yes".

#### ISSUE NO. 2

12. It has not been alleged by the petitioner that he is unemployed and not gainfully employed. Moreover, **It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"**. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages.

13. Since, while deciding issue no.1, above, I have already held that the services of the petitioner had been terminated, illegally, without complying with the provisions the Act, I am of the view that he is entitled for reinstatement with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

#### RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his illegal termination i.e w.e.f. 25.1.1999. Accordingly, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th November 2010 in the presence of parties counsels.

A. S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT, SHIMLA CAMP AT SOLAN

Ref. no. 253 of 2002.  
Instituted on.3.9.2002.  
Decided on. 25.10.2010.

Man Singh R/o Village Janouli, P.O Pinjore, Tehsil Kalka, District Panchkula, Haryana

. . Petitioner.

VS.

The General Manager, M/s Auto Comps India Ltd., Parwanoo, District Solan, HP

. . Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Sudhir Gupta, Advocate.

### AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:—

**“Whether the retrenchment of services of Shri Man Singh ex-operator w.e.f. 26.6.2000 by the General Manager M/s Auto Comps India Ltd., Parwanoo, District Solan, on account of illness of his father is proper and justified? If not, what is entitled to?”**

2. Briefly, the case of the petitioner is that he was appointed by the respondent management on 4.5.1988 and that the last drawn monthly salary, by him, was Rs. 4300/-. During his employment, his father expired on 13.6.2000, due to prolonged illness. For this reason, he could not attend his duties from 6.3.2000 to 25.6.2000. On 26.6.2000, when he reported for duties, the respondent management did not allow him to join. Thereafter, he continued to offer himself for duties but of no avail. It is further averred that neither any notice was served upon him nor salary, in lieu thereof, was paid. Similarly, he was also not paid retrenchment compensation besides holding any enquiry, against him. Despite his best efforts, he could not get employment anywhere. Since, his services were terminated, in an illegal and improper manner, he deserves to be reinstated alongwith all the consequential benefits including back wages.

3. The petition has been contested on having raised various preliminary objections including maintainability and that the reference is bad in law. On merits, it has been admitted that the petitioner had been working with the respondent from 4.5.1998 but it has been specifically denied that his services were terminated on 26.6.2000. In fact, he had started remaining absent w.e.f. 6.3.2000, without any permission or sanction of leave and did not turn up to join his duties despite various letters. In these circumstances, he abandoned his job. It has been pleaded that he remained gainfully employed. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 10.5.2006.

1. Whether the services of petitioner has been illegally retrenched by respondent? If so, its effect? . . . OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? . . . OPP.
3. Whether the present petition is not maintainable as per preliminary objections raised? . . . OPR.
4. Relief.

5. I have heard the learned AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

- |             |   |
|-------------|---|
| Issue No. 1 | Yes.  |
| Issue No. 2 | Entitled to reinstatement with seniority and continuity but without back wages. |
| Issue No. 3 | No.   |
| Relief.     | Reference answered in favour of the petitioner, per operative part of award.    |

### REASONS FOR FINDINGS

#### ISSUE NO.1

7. When, regard is given to the facts, narrated in the petition, it is highlighted that the services of the petitioner stood terminated w.e.f. 26.6.2000. However, in the statement of the petitioner (PW-1), it has come that he had continued to remain, on duty, till 13.6.2001. I may mention that his such version, made on oath, is contrary to his contention as raised in the petition. He further supported this fact that on account of his father's illness, he had applied for leave and that his father remained ill for three months. In this regard, treatment papers are mark P-1 to mark P-12. Later on, his father died and to this effect, Ex. PA, is the death certificate. Vide application Ex. PB, he reported for his duties, on 28.8.2000 but the management did not accept his request. Since, the respondent management had asked him to wait for some time, he kept on visiting the company for 6-7 times as per gate passes Ex. PC-1 to Ex. PC-7.

Neither, he had been issued any notice nor paid compensation. In each calendar year, he had worked for more than 240 days. In the cross examination, he denied of having remained absent from 6.3.2000 but explained that he had applied for leave. He further denied of not having made any correspondence with the respondent company from 25.6.2000 to 28.8.2000 and that all the gate passes, aforesaid, are forged. He admitted that the respondent company was closed after 2002 but further stated that now it has started functioning.

9. Shri Ashish Dass Gupta (RW-1), by filing his affidavit, Ex. R-W/1, has supported the defence version on all material counts. He has further brought, on record, documents Ex. R-1 to Ex. R-25 (objected to), in support of the fact that earlier, the petitioner had been issued warnings and that he had also tendered apologies. In the cross examination, he admitted that the aforesaid documents, produced by him, do not contain the signatures of the petitioner. Regarding his absence from duties, the respondent management had not ordered any enquiry by appointing Enquiry Officer but explained that the same was got conducted from their Human Relation Department. Such enquiry report is with the management but its copy has not been delivered to the petitioner.

10. The version of the petitioner (PW-1), which is also supported by documentary evidence, goes to show that his father had remained ill and ultimately, he expired, as is evident from death certificate Ex. PA. The contention of the petitioner is to this effect that in order to look-after his ailing father, he had to remain on leave. I may mention that the petitioner has not brought, on record, any such document/application, which could go to show that he had applied for leave but this fact is proved, on record, that during the period, he did not join his duties, his father was ill and ultimately, as per death certificate, Ex. PA, died on 25.6.2000. The petitioner (PW-1) has further stated that when he applied to join his duties, he was not allowed and that his such version is supported by Ex. PB.

11. In the statement of Shri Ashish Dass Gupta (RW-1), it has come that on the earlier occasions, the petitioner had either tendered apologies or he was issued warnings, as per documents, as referred to above, particularly, Ex. R-3, Ex. R-5, Ex. R-20 and Ex. R-21 but from his such version, it is not proved that as far as the alleged wilful absence of the petitioner, from duties, is concerned, he had either been issued notice or the respondent management had got conducted any enquiry against him. On account of the previous conduct of the petitioner, his alleged termination/disengagement, from service, cannot be said to be justified, particularly, for the reason that his name stood struck off from the attendance rolls. In case, the petitioner had been found to be wilfully absent, from duties, it was required of the respondent management to have issued chargesheet to him and called for his reply and thereafter, if the same had not been found to be satisfactory, to have ordered the initiation of enquiry against him, by appointing an Enquiry Officer, in accordance with law/rules. In the instant case, even, from the statement of Shri Ashish Dass Gupta (RW-1), it is abundantly clear that no such enquiry had been got conducted against the petitioner. Although, it has been stated by him (RW-1) that the enquiry had been got conducted against the petitioner, from Human Relation Department but, on the record, no such enquiry report has been produced. Moreover, this witness has further made it clear that even, the copy of such enquiry report was not given to the petitioner.

12. From the record, it is also quite clear that before terminating the services of the petitioner neither he had been issued any notice nor paid retrenchment compensation. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to him for resuming his duties. **It has been held by the Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that : " The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:**

**"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied within this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was**



**retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."**

13. Having regard to the law laid down by the Hon'ble Apex Court (supra) as well as evidence, on record, I have no hesitation in holding that the petitioner has succeeded in proving that his services were illegally retrenched by the respondent. Accordingly, my answer to this issued is in "Yes".

#### ISSUE NO. 2

14. The petitioner has alleged that after his retrenchment, he could not get any employment. However, when regard is given to his statement, while appearing in the witness box, as PW-1, it is abundantly clear that he has been doing agricultural work, at his village, after removal from service and supporting his family. From his such version, it cannot be said that he is not gainfully employed. Moreover, **It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"**. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages.

15. Since, while deciding issue no.1, above, I have already held that the services of the petitioner had been terminated, illegally, without complying with the provisions the Act, I am of the view that he is entitled for reinstatement with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

#### ISSUE NO. 3

16. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference having been made to this Court by the Labour Commissioner. Apart from it, the learned Counsel for respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

#### RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his illegal retrenchment/termination i.e 26.6.2000, as per the reference which stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th October, 2010 in the presence of parties counsels.

A. S. JASWAL,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla Camp at Solan.

न्यायालय देवा सिंह नेगी, (हि0प्र0से0), उप-मण्डल दण्डाधिकारी, भरमौर, जिला चम्बा, हिमाचल प्रदेश

श्री महिन्द्र सिंह पुत्र श्री फिन्डा राम, निवासी कुठेहड़, डा0 होली, उप-तहसील होली, जिला चम्बा, हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री महिन्द्र सिंह पुत्र श्री फिन्डा राम, निवासी कुठेहड़, डा0 होली, उप-तहसील होली, जिला चम्बा ने प्रार्थना-पत्र के साथ शपथ-पत्र इस न्यायालय में दिया है कि उसके लड़के अक्षय कुमार की जन्म तिथि

8-8-2005 है परन्तु उसका नाम ग्राम पंचायत अभिलेख कुठेहड़ में दर्ज नहीं है। अब दर्ज करने बारे न्यायालय से अनुरोध किया है।

अतः इस इश्तहार द्वारा सर्वसाधारण एवं आम जनता को सूचित किया जाता है कि उपरोक्त अक्षय कुमार का नाम व जन्म तिथि ग्राम पंचायत अभिलेख कुठेहड़ में दर्ज करने बारे किसी का कोई उजर व एतराज हो तो वह अपना उजर एतराज असालतन या वकालतन इस इश्तहार के जारी होने के एक माह के भीतर इस न्यायालय में पेश कर सकता है अन्यथा आगामी कार्यवाही अमल में लाई जाएगी।

इश्तहार आज दिनांक 11-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

देवा सिंह नेगी,  
उप-मण्डल दण्डाधिकारी,  
भरमौर, जिला चम्बा, हिमाचल प्रदेश।

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न्यायालय देवा सिंह नेगी, (हि0प्र0से0), उप-मण्डल दण्डाधिकारी, भरमौर, जिला चम्बा, हिमाचल प्रदेश

श्री कार्तिक राम पुत्र श्री खगेन्द्र राम, निवासी बनियापारा, डा0 भवानी नगरी, जिला जलपाई, पश्चिम बंगाल।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री कार्तिक राम पुत्र श्री खगेन्द्र राम, निवासी बनियापारा, डा0 भवानी नगर, जिला जलपाई, पश्चिम बंगाल ने प्रार्थना-पत्र के साथ शपथ-पत्र इस न्यायालय में दिया है कि उसके भाई दीपक राम की मृत्यु दिनांक 30-9-2009 को ग्राम पंचायत धरेड़ में हुई है परन्तु उसकी मृत्यु ग्राम पंचायत धरेड़ में दर्ज नहीं करवा सका। अब दर्ज करने बारे न्यायालय से अनुरोध किया है।

अतः इस इश्तहार द्वारा सर्वसाधारण एवं आम जनता को सूचित किया जाता है कि यदि उपरोक्त दीपक राम की मृत्यु ग्राम पंचायत धरेड़ के अभिलेख में दर्ज करने बारे किसी का कोई उजर एतराज हो तो वह अपना उजर एतराज असालतन या वकालतन इस इश्तहार के जारी होने के एक माह के भीतर इस न्यायालय में पेश कर सकता है अन्यथा आगामी कार्यवाही अमल में लाई जाएगी।

इश्तहार आज दिनांक 11-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

देवा सिंह नेगी,  
उप-मण्डल दण्डाधिकारी,  
भरमौर, जिला चम्बा, हिमाचल प्रदेश।

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**In the Court of Shri Deva Singh Negi, HAS, Special Marriage Officer-cum-Sub Divisional Magistrate Bharmour, District Chamba (H.P.)**

In the matter of :

Shri Puran Chand s/o Shri Chattar Bhuj, R/o Village Chulad, P.O. Tundah, Tehsil Bharmour, District Chamba (H. P.).

*Versus*

General public

*Application for registration of Marriage Under Special Marriage Act, 1954.*

Whereas Shri Puran Chand s/o Shri Chattar Bhuj, r/o Village Chulad, P.O. Tundah, Tehsil Bharmour, District Chamba (H.P.) with Naro Devi d/o Durga, r/o Village Jhajja Kothi, Gram Panchayat, Jhajja Kothi, Tehsil Churah, District Chamba H.P. has presented an application on 6-10-2010 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any objection for the registration of the above marriage can appear in this court on 10-12-2010 at 10 A.M. to object registration of above marriage personally or through an authorized agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and of the Court on 10-11-2010.

Seal.

DEVA SINGH NEGI,  
*Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.).*

**In the Court of Shri Deva Singh Negi, HAS, Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.)**

In the matter of :

Shri Arun Singh s/o Shri Gopal Singh, R/o Village & P.O. Ullansa, Tehsil Bharmour, District Chamba (H. P.).

*Versus*

General public

*Application for registration of Marriage Under Special Marriage Act, 1954.*

Whereas Shri Arun Singh s/o Shri Gopal Singh, r/o Village & P.O. Ullansa, Tehsil Bharmour, District Chamba (H.P.) with Champa Devi d/o Goda Ram, r/o Village Haa, P.O. Durgethi, Tehsil Bharmour, District Chamba H.P. has presented an application on 25-10-2010 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any objection for the registration of the above marriage can appear in this court on 10-12-2010 at 10 A.M. to object registration of above marriage personally or through an authorized agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and of the Court on 10-11-2010.

Seal.

DEVA SINGH NEGI,  
*Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.).*

**In the Court of Shri Deva Singh Negi, HAS, Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.)**

In the matter of :

Shri Joginder Singh s/o Shri Thunia, r/o Village Chobhia, P.O. Serkao, Tehsil Bharmour,  
District Chamba (H. P.).

*Versus*

General public

*Application for registration of Marriage Under Special Marriage Act, 1954.*

Whereas Shri Joginder Singh s/o Shri Thunia, r/o Village Chobhia, P.O. Serkao, Tehsil Bharmour, District Chamba (H.P.) with Rita Devi d/o Jagat Ram, r/o Village Naguni, P.O. Uteep, Tehsil & District Chamba H.P. has presented an application on 29-9-2010 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any objection for the registration of the above marriage can appear in this court on 10-12-2010 at 10 AM to object registration of above marriage personally or through an authorized agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and seal of the Court on 10-11-2010.

Seal.

DEVA SINGH NEGI,  
*Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.).*

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**In the Court of Shri Deva Singh Negi, HAS, Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.)**

In the matter of :

Shri Des Raj s/o Shri Prithia Ram, r/o Village Mehna, P.O. Bharadi, Tehsil Bharmour,  
District Chamba (H. P.).

*Versus*

General public

*Application for registration of Marriage Under Special Marriage Act, 1954.*

Whereas Shri Des Raj s/o Shri Prithia Ram, r/o Village Mehna, P.O. Bharadi, Tehsil Bharmour, District Chamba (H.P.) with Bunda Devi d/o Moti Ram, r/o Village Kurgal, Pargana Rajnagar, Tehsil & District Chamba H.P. has presented an application on 25-10-2010 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any objection for the registration of the above marriage can appear in this court on 10-12-2010 at 10 AM to object registration of above marriage personally or through an authorized agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and of the Court on 10-11-2010.

Seal.

DEVA SINGH NEGI,  
Special Marriage Officer-cum-Sub Divisional  
Magistrate Bharmour, District Chamba (H.P.).

ब अदालत श्री लाजम सिंह, सहायक समाहर्ता प्रथम वर्ग, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री अशोक कुमार सुपुत्र श्री कृष्ण लाल, निवासी गांव गुनियाला, डाकघर डलहौजी, जिला चम्बा  
(हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना-पत्र नाम दुरुस्ती बारे।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फी व अन्य कागजात इस आशय से गुजारे हैं कि उसके पिता का सही नाम कृष्ण लाल है जोकि सही व दुरुस्त है। तथा प्रार्थी के स्कूल प्रमाण-पत्रों व अन्य जगहों पर सही दर्ज है। लेकिन राजस्व विभाग के मुहाल भटोली व रुलियाणी में गलती से कृष्ण चन्द दर्ज है। जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के पिता के नाम की दुरुस्ती बारे यदि किसी को कोई उजर-एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23-12-2010 को आकर अपना एतराज दर्ज करवा सकता है अन्यथा गैर-हाजरी की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 11-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

लाजम सिंह,  
सहायक समाहर्ता प्रथम वर्ग,  
डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

ब अदालत श्री लाजम सिंह, सहायक समाहर्ता प्रथम वर्ग, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री करनैल सुपुत्र श्री बैन्सू राम, निवासी गांव फरोली, डाकघर बलेरा, तहसील डलहौजी, जिला चम्बा  
(हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना-पत्र नाम दुरुस्ती बारे।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फी व अन्य कागजात इस आशय से गुजारे हैं कि उसका सही नाम करनैल है जोकि ग्राम पंचायत बलेरा व उसके स्कूल प्रमाण-पत्रों में

सही दर्ज है। लेकिन राजस्व विभाग के मुहाल बलेरा पटवार वृत्त बलेरा में गलती से करनैल सिंह दर्ज है। जिसकी दुरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के नाम की दुरुस्ती बारे यदि किसी को कोई उजर-एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23-12-2010 को आकर अपना एतराज दर्ज करवा सकता है अन्यथा गैर-हाजरी की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 19-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

लाजम सिंह,  
सहायक समाहर्ता प्रथम वर्ग,  
डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

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ब अदालत श्री सी० आर० आजाद, कार्यकारी दण्डाधिकारी, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश

श्री देवी राम पुत्र श्री कुन्जू, निवासी जगतसुख, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश

बनाम

आम जनता

विषय.—प्रकाशन इश्तहार बाबत जन्म तिथि पंजीकरण जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस

बनाम

आम जनता।

श्री देवी राम पुत्र श्री कुन्जू, निवासी जगतसुख, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश ने इस न्यायालय में आवेदन-पत्र मय शपथ-पत्र गुजारा है कि उसके भाई श्री तेज राम की मृत्यु दिनांक 4-9-1997 को हुई है परन्तु उसकी मृत्यु तिथि ग्राम पंचायत जगतसुख के रिकार्ड में दर्ज नहीं की गई है। जिसे अब दर्ज करवाने के आदेश सादर फरमाए जावें।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को श्री तेज राम की मृत्यु तिथि दर्ज करवाने बारे आपत्ति हो तो वह दिनांक 18-12-2010 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर व एतराज समायत न होगा तथा नियमानुसार मृत्यु तिथि दर्ज करवाने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 12-11-2010 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

सी० आर० आजाद,  
कार्यकारी दण्डाधिकारी,  
तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश।

**राज्य निर्वाचन आयोग हिमाचल प्रदेश**  
**STATE ELECTION COMMISSION HIMACHAL PRADESH**  
 आर्मसडेल, शिमला-171002, Armsdale, Shimla-171002 Tel. 0177-2620152, 2620159, 2620154 Fax. 2620152

NOTIFICATION

*Shimla, the 4<sup>th</sup> December, 2010*

**No. SEC.13-90/2009-4068-4220.**—In exercise of the powers vested in it under section 281 of Himachal Pradesh Municipal Act, 1994 and rule 22 of the Himachal Pradesh Municipal Election Rules, 1994, the State Election Commission hereby notifies the election programme for the conduct of general election to Municipal Councils/Nagar Panchayats in Himachal Pradesh as under:—

- |  |  |
|--|--|
| (a) The Nomination papers shall be :<br>Presented: -   | On <b>13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> December, 2010</b><br>(Between 11.00 AM to 3.00 PM.) Nomination papers shall be filed at the places, and before the Officers appointed by the Returning Officer (Deputy Commissioner).  |
| (b) The Nomination papers shall be :<br>scrutinized.   | On <b>16<sup>th</sup> December, 2010</b> (from 10.00 am onwards)   |
| (c) A candidate may withdraw his candidature:  | On <b>18<sup>th</sup> December, 2010</b> (before 3.00 PM.)   |
| (d) The list of contesting candidates showing :<br>the name of symbol allotted to them<br>shall be prepared and affixed: | On <b>18<sup>th</sup> December, 2010</b> immediately<br>after the time of withdrawal is over.  |
| (e) The list of polling stations shall be pasted :   | On or before <b>13<sup>th</sup> December, 2010</b> .   |
| (f) The Poll, if necessary, shall be held from :   | On <b>3<sup>rd</sup> January, 2011. 9.00 AM to 4.00 PM:</b>  |
| (g) The counting, in the event of poll shall :<br>be done:   | On <b>3<sup>rd</sup> January, 2011 immediately after the close of poll</b> , in a secure and suitable premises within the concerned Municipal area as may be chosen/ specified by the Returning Officer, the counting for the ward members will be taken up first and thereafter counting for the Vice President and President, respectively. The counting shall be continued until it is completed. |
| (h) Result of election shall be declared :   | The result shall be declared immediately after<br>counting is over.  |
| (i) The election process shall be completed:   | by <b>6<sup>th</sup> January, 2011</b> .   |

By order ,  
**DEV SWARUP,**  
*State Election Commissioner.*

